



**Superior Court of California  
County of San Diego  
PO BOX 122724  
SAN DIEGO CA 92112-2724**

June 15, 2004

**PROPOSED CHANGES TO  
THE SAN DIEGO SUPERIOR COURT RULES  
TO BECOME EFFECTIVE JANUARY 1, 2005**

Pursuant to rule 981 of the California Rules of Court, local rules with a proposed effective date of January 1, 2005, have been approved by the Court in principle and are hereby submitted to the bar for comment. Any comments or concerns regarding these proposed changes should be forwarded to Rules Committee Chair Judge Lisa Guy-Schall c/o Darlene Dornan, Director of Legal Services, P.O. Box 122724, San Diego, CA 92112, prior to August 2, 2005.

Proposed changes are as follows:

**DIVISION I  
GENERAL AND ADMINISTRATIVE**

**Rule 1.8**

**Appointment, Powers, and Duties**

A majority of the judges of the court may appoint a court executive officer pursuant to section ~~69898~~ **71620** of the Government Code who shall also act as jury commissioner and clerk of the court. Any reference in these rules, the California Rules of Court, or statutes, to the executive officer, clerk of the court, or jury commissioner refers to the executive officer who functions in each of these capacities.

The powers, duties, and responsibilities transferred from the county clerk to the court executive officer pursuant to this rule shall include all of those performed by the county clerk with respect to court actions, proceedings, and records.

The county clerk is hereby relieved of any obligation imposed by law with respect to the above powers, duties, and responsibilities. This rule does not transfer from ~~said~~ **the** county clerk to the court executive officer obligations in reference to the issuance of marriage licenses or the filing of fictitious business names.

**Rule 1.11**

**Jury Lists**

The jury master list for the North County Division shall be comprised of those jurors residing in the former North County Municipal Court District.

The jury master list for the East County Division shall be comprised of those jurors residing in the former El Cajon Municipal Court District.

The jury master list for the South County Division shall be comprised of those jurors residing in the former South Bay Municipal Court District.

The jury master list for the Central Division, Downtown Courthouse and Hall of Justice, shall be comprised of those jurors residing in the former San Diego Judicial District, North County Judicial District, El Cajon Municipal Court District, and South Bay Municipal Court District.

~~The venues for capital cases shall be the North County Division and the Central Division.~~

Jurors shall be allowed, in the sound discretion of the court, to transfer their service to any court location regardless of their residence if doing so would make it more convenient for the juror.

The jury master list shall be drawn so that all persons have an equal chance of being selected regardless of their place of residence.

The jury master list shall be drawn so that all persons who have not served shall be drawn before any who have completed service in the past three years.

## **DIVISION II CIVIL**

### **Rule 2.1 Policy**

It is the policy of the courts to manage all cases in accordance with ~~sections 2.4 and 2.3~~ of the Standards of Judicial Administration, Appendix to the California Rules of Court. Nothing in ~~sections 2.1 and 2.3~~ **the Appendix** shall prevents the courts from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed. However, no procedure or deadline established by these rules or order of the court may be modified, extended or avoided by stipulation or agreement of the parties, except as permitted by section 68616 of the Government Code, unless approved by the court in advance of the date sought to be altered.

### **2.2 Filing and Service of Papers**

Unless specifically directed otherwise, all papers shall **must** be filed in the civil business office of the appropriate division.

. . . .

### **Rule 2.3**

#### **Case Assignment**

At the time an action is filed, it will be assigned either to the master calendar or to a judge for all purposes. A Notice of Case Assignment, which includes the name, physical location, and department of the assigned judge, if any, and a Stipulation to Use of Alternative Dispute Resolution Process form may be generated at the time the case is filed. ~~It shall be the duty of~~ **is mandatory that** the plaintiff or cross-complainant to serve all defendants with a copy of the Notice of Case Assignment and other documents as set out in 2.5.

**All construction defect cases in the county will be assigned to one of the designated construction defect departments in the Central Division. Any pre-litigation petition brought to the court pursuant to Civil Code §1375(n) shall be assigned a case number and assigned to a designated construction defect department in the Central Division. Any construction defect complaint filed after completion of the pre-litigation requirements of Civil Code §1375, et seq. shall be assigned the same case number as any pre-litigation case number existing for the action.**

## Rule 2.4

### Peremptory Challenges

**This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure section 170.6 and California Government Code § 68616(i).**

~~A. **Cases Assigned to a Judge for All Purposes:** Pursuant to section 68616, subdivision (i), of the Government Code, in independent calendar cases, any challenges pursuant to section 170.6 of the Code of Civil Procedure shall must be exercised within 15 days of the challenging party's first appearance: i.e., a plaintiff's challenge would be due within 15 days of the date the complaint is filed and a defendant's challenge would be due no more than 15 days after the challenging defendant's first general appearance.~~

~~—— If an independent calendar case is reassigned to another independent calendar judge "for all purposes" (other than the trial of the cause), the challenge must be made within 10 days after notice of the reassignment.~~

~~—— If an independent calendar case is reassigned to another judge for immediate trial, the challenge must be made at that time.~~

~~B. **Master Calendar Cases:** Where a judge other than the judge assigned to the case for all purposes, court commissioner, or referee assigned to or scheduled to try a cause or hear a matter, is known or is easily ascertainable at least 10 days before the date set for trial or hearing, any challenges pursuant to section 170.6 of the Code of Civil Procedure must be made at least 5 days before that date. If the challenge is directed to the trial of a cause where there is a master calendar, the challenge shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial.~~

~~C. **Miscellaneous Cases:** In the case of trials or hearings not specifically provided for above, the procedures of section 170.6 of the Code of Civil Procedure shall be followed as nearly as possible.~~

## Rule 2.6

### Defendant's Appearance

Paragraph 2:

If a defendant is unable to make a timely general appearance, a Certificate of Inability to Respond shall **must** be filed and served stating why a responsive pleading could not be filed. The filing of a Certificate of Inability to Respond shall ~~constitutes~~ a general appearance for purposes of these rules.

## 2.7 Request for Entry of Default

...and thereafter fails to plead within the time provided by statute or in these rules, the plaintiff shall **must** request entry of default forthwith.

## 2.9 Case Management Conference

A. Scheduling and Notice: ...Further, parties shall **must** serve by mail within 10 days of the date of the notice...

Second paragraph in Section A: Case management conferences will also be set by the court in all cases transferred from another court, reclassified pursuant to **the** Code of Civil Procedure, ~~section 395.9~~, or stayed...

B. Preparation for Conference: (third paragraph): Parties completely familiar with the case and possessing authority to enter into stipulations ~~shall~~ **must** be present at the case management conference and ~~shall~~ **must** be fully prepared to discuss any issues...

## **2.10 Cases “At Issue”**

Paragraph 2, second sentence: If the amendment adds a new party, the new party ~~shall~~ **must** be served within 30 days of the date leave to amend was granted and the proof of service on the new party must be filed with the court. Upon the appearance of a new party, the case will remain at issue, unless otherwise ordered. If the new party is not timely served with process, the new party may, ~~on the court's own motion upon notice,~~ be dismissed by the court and/or other sanctions may be imposed.

## **2.13 Stays of Actions**

If a party files a notice of stay in accordance with the California Rules of Court, ~~rule 225(d),~~ the court may...

## **2.16 Jury Instructions**

On the scheduled trial date, the parties ~~shall~~ **must** submit the full text of proposed jury instructions to the court. Jury instructions ~~shall~~ **must** be gender neutral and double spaced on plain paper. They may include ~~BAJI~~ **instruction** numbers but the mere submission of a list of ~~BAJI~~ **instruction** numbers is not acceptable. ...

## **2.17 Juror Questionnaire**

If juror questionnaires are proposed by counsel, the questionnaires must be accompanied by a Juror Questionnaire Cover Sheet which ~~shall~~ **must** be provided by the court.

## **2.18 Motions in Limine**

Motions in limine ~~shall~~ **must** be limited in scope in accordance with *Clemens v. American Warranty Corp.* (1978) 193 Cal.App.3d 444, 451: e.g, evidentiary issues where attempts to "unring the bell" would be unduly prejudicial or futile. Unless otherwise directed by the court, counsel ~~shall~~ **must** file and serve motions in limine and opposition thereto five court days and two court days respectively prior to trial call. . . .

## **2.21 Mandatory Appearance**

Paragraph 2: Counsel appearing on behalf of their clients ~~shall~~ **must** be completely familiar with the case and possess complete authority to negotiate and settle. Counsel ~~shall~~ **must** have authority to make a specific demand and ~~shall~~ **must** be authorized to make an offer or counteroffer in a specific amount. . . .

Paragraph 3: Unless excused by the court, such requests ~~shall~~ **must** be submitted to the court in the form of a stipulation signed by all attorneys of record...

Paragraph 4: If the settlement conference is to be heard by a temporary judge, such stipulations and settlement conference briefs ~~shall~~ **must** be submitted to the court and

ex parte requests shall **must** be made to the independent calendar department to which the case is assigned.

## **2.22 Settlement Statements/Briefs**

Paragraph 2: Statements shall **must** not exceed five pages and shall **must** include the necessary information... Mandatory settlement conferences are governed by ~~CRG~~, Rule 222 the California Rules of Court.

## **2.23 Notifications of Settlement or Continuances**

A. Settlement: In accordance with the California Rules of Court, ~~rule 225~~, if a case is settled, the plaintiff shall **must** immediately give the court written notice. The plaintiff shall **must** also immediately notify the court...

## **CHAPTER 3 ALTERNATIVE DISPUTE RESOLUTION (ADR)**

ADR Policy Statement: It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation and arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

[The ADR Policy Statement has been moved from the end of Rule 2.24 to the beginning of this chapter.]

## **2.25 Arbitration Procedures**

- B. Continuances: Rules regarding continuances of arbitration hearings are set forth in the California Rules of Court, ~~rule 1607~~. Rules regarding completion of cases within 90 days and the reappointment of an arbitrator for good cause are set forth in the California Rules of Court, ~~rule 1605~~.
- C. Conduct of the Arbitration Hearing: The arbitration hearing shall **must** be conducted as follows:
  - 1. The arbitrator shall **must** administer the oath;
  - 2. Remains the same
  - 3. At the time of the arbitration hearing, or at any other time designated by the arbitrator, each attorney shall **must** submit to the arbitrator...

## **2.26 Exchange of Experts After Arbitration**

Paragraph 2: Pursuant to the stipulation of the parties at the case management conference, exchange of experts after arbitration shall **must** be made according to the following schedule:

- A. Initial Exchange: Within 15 days of the date of any method of service of a trial de novo request, pursuant to section 2034 of the Code of Civil Procedure each party shall **must** personally serve on all parties...

## 2.31 Civil Mediation Program

~~The San Diego Superior Court has established a Civil Mediation Program to replace the Mediation Pilot Program established by Code of Civil Procedure section 1730 et seq. The Civil Mediation Program, in effect for cases filed on or after May 1, 2003, or upon stipulation, is designed to assist parties with the early resolution of their dispute. (The remainder of this paragraph remains)~~

- D. Payment of Mediators: Paragraphs 1, 2, 4, 5 and 6 remain the same. Delete paragraph 3 in its entirety as follows: ~~Parties may also elect to participate in the Soft Tissue/Auto PI Program by stipulation or upon request to the court. Cases eligible for this program are valued at \$15,000 or less and involve an automobile related soft tissue injury where liability is not in dispute. Once the court has deemed the case eligible for the program, parties may select a mediator on the court's approved panel of mediators who has agreed to the court's payment schedule for the Soft Tissue/Auto PI Program: a flat fee of \$300.00 per mediation.~~
- F. Timing of Mediation and Trial Dates: ... If parties request an extension of time for mediation, they must file a stipulation in the assigned department indicating the date of the future mediation session. Alternatively, they may contact the mediator to request an extension in 30-day increments which will be subject to approval by the court. In all cases, a Reappointment of Mediator notice will be generated if the extension is approved.
- H. Evaluation: All mediators on the court's approved panel ~~are~~ may be required to distribute a post mediation survey to all parties, counsel and participants who appeared at the mediation session if requested to do so by the court. ...

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- D. Continuances: Rules regarding continuances of arbitration hearings are set forth in the California Rules of Court, ~~rule 1607~~. Rules regarding completion of cases within 90 days and the reappointment of an arbitrator for good cause are set forth in the California Rules of Court, ~~rule 1605~~.
- E. Conduct of the Arbitration Hearing: The arbitration hearing ~~shall~~ must be conducted as follows:
1. The arbitrator ~~shall~~ must administer the oath;
  2. Remains the same
  3. At the time of the arbitration hearing, or at any other time designated by the arbitrator, each attorney ~~shall~~ must submit to the arbitrator...

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All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the **Civil Mediation** Program. Limited civil collection cases are not eligible at this time.

....

**D. Payment of Mediators:** Mediators shall be compensated directly by the parties. The fees and expenses of mediators shall **must** be shared equally between the parties, unless otherwise agreed.

Mediators on the court's approved panel have agreed to charge \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter for court-referred mediation.

~~Parties may also elect to participate in the Soft Tissue/Auto PI Program by stipulation or upon request to the court. Cases eligible for this program are valued at \$15,000 or less and involve an automobile related soft tissue injury where liability is not in dispute. Once the court has deemed the case eligible for the program, parties may select a mediator on the court's approved panel of mediators who has agreed to the court's payment schedule for the Soft Tissue/Auto PI Program: a flat fee of \$300.00 per mediation.~~

Mediators on the court's approved panel may not charge parties for preparation or administrative time, but may require that fees be deposited in advance of the mediation session and may have cancellation fees and policies.

Parties may also utilize the services of mediators who are not on the court's approved panel. They will be charged the mediator's individual per hour rate and any other fees in accordance with their policies.

The Court will establish a pro bono/modest means procedure that will be available to qualified parties.

....

**F. Timing of Mediation and Trial Dates:** Cases will be referred to mediation for up to 90 days. At the time of the Case Management Conference, tentative trial dates will also be given. If the mediation has ended in non-agreement, the court will confirm the trial dates given. If parties request an extension of time for mediation, they must file a stipulation **in the assigned** department indicating the date of the future mediation session.

....

**H. Evaluation:** All mediators on the court's approved panel ~~are~~ **may be** required to distribute a post mediation survey to all parties, counsel and participants who appeared at the mediation session. All mediation participants are requested to complete these surveys in a timely manner to assist the court with program evaluation.

### 2.33 Unlawful Detainer Proceedings

B. Trial Setting: ... In limited unlawful detainer cases, ~~pursuant to Code of Civil Procedure 1170.5, subdivision (a), a memorandum~~ **written request** must be filed

requesting that the case be set for trial. The memorandum **request** must contain the following items of information:

....

Any counter memorandum **request** must be filed within 5 days of the filing of the trial request memorandum.

D. Redesignation of Case when Possession Is No Longer in Issue (Section 1952.3 of the Civil Code): The plaintiff ~~shall~~ **must** immediately notify the court when possession is no longer in issue and request the matter be redesignated as an unlimited or limited civil matter (~~section 1952.3 of the Civil Code~~). The case ~~shall then~~ **will** be monitored as follows:

....

### **2.34 Uninsured/Underinsured Motorist Actions**

Paragraph 1: ...plaintiff ~~shall~~ **must** file a declaration... The court will suspend the time requirements and the action ~~shall~~ **will** be stayed for a period of 180 days. Any party who claims to be exempt from the stay and who desires to further prosecute the action ~~shall~~ **must** object by noticed motion in the stayed action. Upon the expiration of the 180-day stay period, the action ~~shall~~ **will** be dismissed unless, upon noticed motion, good cause is shown to the contrary. If such motion is granted, the stay may be extended, but such an extension ~~shall~~ **will** not exceed 180 days.

Paragraph 2: ...plaintiff ~~shall~~ **must** file a Certificate of Progress so advising the court within 60 calendar days of the filing of the complaint. The certificate ~~shall~~ **must** indicate whether a stay of the action or a portion...

### **2.35 Small Claims**

To facilitate compliance with ~~section 2.3e~~ of the Standards of Judicial Administration relating to case disposition time standards and delay reduction, a notice ~~shall~~ **will** be given to the plaintiff...

B. Reassignment: If the parties do not stipulate to one commissioner or temporary judge, the matter ~~shall~~ **will** be set for hearing before another commissioner, ...

C. Proof of Service: Proof of service ~~shall~~ **must** be filed not later than five days...

D. Appeal Procedures: In addition to the requirements of ~~section 116.710 et seq~~ of the Code of Civil Procedure and the California Rules of Court, ~~rules 151-156~~, the following...

Parties are not required to file trial briefs in small claims appeals. However, if a party feels a brief is necessary, it ~~shall~~ **must** be filed at least five court days prior to the hearing and ~~shall~~ **must** not exceed five pages in length.

### **2.36 Eminent Domain**

A. Case Management Conference. ... By the date of this case management conference, all parties ~~shall~~ **must** either have appeared, been defaulted... A trial date ~~shall~~ **will** be set not sooner than 120 days after the case is "at issue."

B. Settlement Conference: A settlement conference on the issue of compensation ~~shall~~ **will** be set 15 days before the trial date... The plaintiff ~~shall~~ **must** attend the



conference with its negotiating agent, and all defendants who claim compensation ~~shall~~ **must** be present except lienholders, if any.

C. Trial Readiness Conference: A trial readiness conference on the issue of compensation ~~shall~~ **will** be set 10 days before the trial date. The plaintiff and other parties presenting valuation testimony at the trial ~~shall~~ **must** meet prior to the scheduled conference...

## **2.37 Minors/Incompetents/Conservatees**

- A. Guardians ad Litem: As provided ~~under section 372 et seq~~ **in** of the Code of Civil Procedure, a guardian ad litem ~~shall~~ **must** be appointed for a minor, incompetent person, or a person for whom a conservator has been appointed. Due to potential conflicts of interest, parents asserting individual claims or defenses ~~shall~~ **may** not serve as guardians ad litem for their minor children, absent a court order to the contrary. Petitions for appointment of a guardian ad litem ~~shall~~ **must** be filed at the same time as the underlying complaint is filed.
- B. Petitions to Compromise the Claim of a Minor: ... The petition ~~shall~~ **must** be filed and set for hearing in the department designated by the presiding or supervising department unless the case has been assigned to a judge or independent calendar department, in which case the petition ~~shall~~ **must** be filed and heard in that department. The person compromising the claim on behalf of the minor and the minor ~~shall~~ **must** be in attendance at the hearing...  
At the time of the hearing, the court ~~shall~~ **will** determine the amount of costs, expenses...  
The funds ~~shall~~ **must** be disbursed in accordance with the order approving the settlement. ...
- C. Trusts: ... the following provisions ~~shall~~ apply:
1. ... counsel for plaintiff ~~shall~~ **must** submit a copy of the proposed trust agreement...
  2. ... When the required changes have been made to the proposed trust agreement, the trial judge ~~shall~~ **will** sign an appropriate order... The trial judge ~~shall~~ **will** forward a file stamped copy of this order and the bond to the probate court.
  3. ...the trustee ~~shall~~ **must** file a petition in the probate court subjecting the trust... Such petition ~~shall~~ **must** be the first petition in a new probate proceeding and a full "first petition" filing fee ~~shall~~ **will** be paid.

## **2.38 Construction Defect Cases**

See rule 2.3, Case Assignment.

## **2.43**

### **Soldiers' And Sailors' Servicemembers Civil Relief Act**

A. When it is determined a defendant is in the military service, so as to be entitled to the benefits of the ~~Soldiers' and Sailors'~~ **Servicemembers** Civil Relief Act of 1940 (50 U.S.C. Appen. §§ 501- 594 **596**), counsel for the plaintiff shall, ~~prior to the initial case management conference~~, determine the defendant's ability to appear and defend the action. No later than the time of the initial scheduled hearing, the plaintiff

shall advise the court of the defendant's ability to proceed, and, if necessary, shall apply for **the court** shall issue one of the orders under subdivision "C" **or "F"** of this rule.

**B.** When a **noticed** defendant or a cross-defendant, other than the plaintiff, communicates to the court in writing that he or she is in the military service and claims the benefits of the ~~Soldiers' and Sailors'~~ **Servicemembers** Civil Relief Act of 1940, the court shall order the matter set on the case management conference calendar (rule 2.9) **for a hearing, to determine how to proceed**, no sooner than 60 days after the defendant's notification to the court, unless the court orders otherwise. The court shall notify the plaintiff of the defendant's communication by serving a copy upon plaintiff. Plaintiff shall then serve upon defendant notice of the **hearing** case management conference (subdivision "D" of this rule). At the **hearing** case management conference, the court shall make the findings required under subdivision "E" of this rule based upon the evidence presented at the conference.

**C.** At the hearing **to determine how to proceed on an unnoticed defendant requesting a stay under the Servicemembers Civil Relief Act**, case management conference, the court may make one or more of the following orders:

1. If, by the **hearing**, initial case management conference, the plaintiff is unable to advise the court of the defendant's ability to proceed **there is no evidence that the defendant has received actual notice, counsel may be appointed to represent the defendant.**

2. **If the court intends to enter a judgment against an unnoticed defendant, counsel shall be appointed to represent the defendant.**

3. ~~the action shall be stayed for a reasonable time not to exceed 60 days, so that a hearing may be held to determine the defendant's ability to appear and defend, and whether the defendant will be prejudiced if the action proceeds in his or her absence~~ **If the court determines there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists, the court shall grant a stay of proceedings for a minimum of 90 days.** ~~The plaintiff shall serve upon defendant notice of stay and of the hearing to determine prejudice (subdivision "D" of this rule). If the notice of stay and of the hearing cannot be timely served upon the defendant, and plaintiff submits evidence to the court that it is either not feasible or unduly expensive to effect service upon the defendant at that time, the court shall so find, and shall dismiss the action without prejudice, reserving jurisdiction to reopen the case if the plaintiff notifies the court that service can be effected upon the defendant. If plaintiff submits evidence that convinces the court that the defendant has, in fact, received notice of the hearing but has chosen to ignore it, the court shall so find and the action shall proceed in due course;~~

2. That counsel be appointed to represent the defendant;

4. **If the court determines the defendant is not entitled to the benefits of the Servicemembers Civil Relief Act, the court may order the action to go forward in the defendant's absence.**

35. Any order necessary to further the delay reduction policies set forth in sections 2.1 and 2.3 of the Standards of Judicial Administration appended to the California Rules of Court, **made in compliance with the Servicemembers Civil Relief Act.**

**D.** Any notice given pursuant to subdivision "B" or "C.1" of this rule shall be served on the defendant by the plaintiff in any manner provided in the Code of Civil Procedure for service of summons. Such notice shall include a statement that if the

defendant is unable to appear personally and is requesting a stay of the action because he or she is unable to appear and defend the action at that time, ~~or would otherwise be prejudiced if the action went forward, and that the defendant must serve upon the plaintiff and the court prior to the case management conference~~ **the next scheduled hearing, proper notice as defined under the Servicemembers Civil Relief Act. Proper notice shall be described as a letter or other communication that sets forth facts explaining why current military duty materially affects the defendant's ability to appear,** an affidavit or declaration under penalty of perjury describing specific facts showing why the defendant cannot appear and defend, or why the defendant would be prejudiced if the action were to go forward in his or her absence. The defendant shall also state when he or she **a date when the defendant** will be able to appear and defend, **and a letter or other communication from the commanding officer stating that the defendant's current military duty precludes appearance and that leave is not authorized at the time of the hearing.** The notice to the defendant shall clearly state that the defendant's failure to provide an affidavit or declaration under penalty of perjury stating facts showing why the action should not go forward, or why the defendant would be prejudiced if the action were to go forward, **if the defendant fails to provide proper notice, it** will be construed by the court as an admission that the defendant **is not entitled to the benefits of a stay under the Servicemembers Civil Relief Act and the action will go forward** will not be prejudiced if the action went forward in the defendant's absence

**E. At the hearing to determine how to proceed on a noticed defendant requesting a stay under the Servicemembers Civil Relief Act** If an order is made under subdivision "C.1" of this rule and notice of stay and of the hearing is served on the defendant pursuant to subdivision "D" of this rule, the court shall set a hearing and shall make specific findings on the record as to the following issues:

1. The defendant ~~is in the military and is entitled to the benefits of the Soldiers' and Sailors' Servicemembers Civil Relief Act of 1940~~ **because he or she is in the military; is a reservist ordered to report to military service; is a person ordered to report for induction; or is a United States citizen in military service with the forces of a nation allied with the United States in the prosecution of a war or military action;** and

2. The defendant's present ability to appear and defend the action **A letter or other communication was received by the court that sets forth facts explaining why current military duty materially affects the defendant's ability to appear;** and

3. The prejudice to the defendant if the action proceeds in the defendant's absence **The defendant provided a date when he or she will be able to appear; and**

4. **A letter or other communication was received by the court from the commanding officer stating that the defendant's current military duty precludes appearance and that leave is not authorized at the time of the hearing.**

**F. If the court makes a finding that the noticed defendant is able to appear and defend, the court shall order the action to proceed in due course. If a stay is requested by the noticed defendant, and the evidence supports the specific findings in subdivision "E", the action shall be stayed for a minimum of 90 days. The defendant may request additional stays, if proper notice requirements are satisfied for each new request. If the court denies a request for an additional stay, it shall appoint an attorney to represent the noticed defendant. An application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.** shows that defendant is not currently able to appear and defend or would

~~otherwise suffer prejudice if the action proceeded in his or her absence, and a stay is necessary to permit the defendant to make arrangements to appear and defend, the court shall stay the action for a reasonable time, generally not to exceed 60 days.~~

## **2.45 Fax Filings**

A. Agency Fax Filings: Pursuant to the California Rules of Court, ~~rule 2005~~, the court will accept for filing all documents submitted by fax filing agencies, except those specified in the California Rules of Court, ~~rule 2002~~.

## **2.46 Procedure Upon Death of Plaintiff**

Within 10 calendar days of receiving notice of the death of a plaintiff, counsel for the plaintiff ~~shall~~ **must** file with the court...

Upon receipt of a Notice of Death of the Plaintiff, the court ~~shall~~ **will** suspend future consideration of the case for 90 calendar days. The case ~~shall~~ **will** be placed on a dismissal calendar...

## **2.47 Receivers**

Paragraph 2: ... Confirmation of the ex parte appointment of a receiver ~~shall~~ **must** be done in conformance with the provisions of the California Rules of Court, ~~rule 351~~.

Paragraph 3: The proposed order appointing a receiver ~~shall~~ **must** set forth the powers of the receiver...

Paragraph 5: If the receiver intends to employ a property management company, the proposed order ~~shall~~ **must** specify its rate of compensation. ...

Paragraph 8: Accountings filed in receivership proceedings ~~shall~~ **must** set forth the beginning and ending dates... Receiver's fees and administrative expenses, including fees and costs of property managers, accountants and/or attorneys previously authorized by the court ~~shall~~ **must** be included in the summary, but separately stated. The summary ~~shall~~ **must** be supported by appropriate itemized schedules and evidentiary foundation. ...

## **2.49 Daily Transcripts of Proceedings**

... If the request is granted, the requesting party ~~shall~~ **must** deposit with the clerk of the court each day... Current information regarding such cost ~~shall~~ **will** be available in the office of the executive officer or assistant executive officer of each division.

## **2.51 Bankruptcy**

All parties to an action ~~shall~~ **must** promptly make it known in writing...

## **2.53 Default Attorney Fee Schedule**

Paragraph 2: ...The court ~~shall~~ **will** determine the reasonable fee amount according to proof.

Paragraph 3: In contested matters, the court ~~shall~~ **will** determine the reasonable attorney fees...

## **2.54 Elisors**

...When applying for an appointment of an elisor, the application and proposed order shall **must** designate "The clerk of the Court or His/Her Designee" as the elisor... The application shall **must** not set forth a specific court employee. The declaration supporting the application shall **must** include specific facts...

## **2.55 Sanctions**

A. If any counsel, a party represented by counsel, or a party if in pro per...  
If a failure to comply with the rules in Division II is the responsibility of counsel and not of the party, any penalty shall **must** be imposed on counsel and shall **must** not adversely affect...

**DIVISION III  
CRIMINAL**

**Rule 3.4**

**A.     Bail Reductions Or Increases**

When bail has been set by a judge, all requests for an increase or reduction of said bail shall be made to that judge, except that any judge to whom a criminal matter is assigned for any stage of the proceedings may, in his or her discretion, on the court's own motion, or on the motion of any party, modify the amount of bail set.

**B.     Confidentiality of Pretrial Services Records and Information.**

Information supplied by a defendant to a representative of the San Diego Superior Court Pretrial Services Department during the defendant's initial interview or subsequent contacts, or information obtained by Pretrial Services as a result of the interview or subsequent contacts, shall be deemed confidential and shall not be subject to subpoena or to disclosure, and shall not subject any employee or attaché of the Pretrial Services Department to subpoena, with the following exceptions:

(a) information relevant to the imposition of conditions of release shall be presented to the court, the prosecutor, the defendant, and the defendant's attorney, on a standardized form when the court is considering what conditions of release to impose, and if the information given is false or misleading, it may be used for prosecution or impeachment;

(b) information concerning compliance with any conditions of release imposed by the court shall be furnished to the court, the prosecutor, the defendant and the defendant's attorney, for prosecution, impeachment, or for consideration of modification of conditions of release;

(c) as otherwise ordered by the court in the interest of justice, upon noticed motion of the party seeking disclosure and a showing of good cause.

DIVISION IV  
SECTION ONE  
PROBATE

**Rule 4.1**

**Address, Phone and Hours for Probate Examining Division**

San Diego Central Division:  
Madge Bradley Building  
1409 4th Avenue, 3rd Floor  
San Diego, CA 92101

Probate Examiners:  
Monday through Friday  
1:30 to ~~32:30~~ p.m. by phone  
2:30 to 3:30 p.m. in person  

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(619) 236-3784 687-2000

Probate Business Office  
Court Investigators  
Monday through Friday  
8:30 a.m. to 4:30 p.m.  
(619) 236-3784 687-2000

Vista (North County Division):  
325 South Melrose Drive, Ste. 1200  
Vista, CA 92083-1

Probate Examiners  
Monday through Friday  
1:30 to ~~32:30~~ p.m. by phone  
2:30 to 3:30 p.m. in person  

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(760) 806-6150

Probate Business Office  
Court Investigators  
Monday through Friday  
8:30 a.m. to 4:30 p.m.  
(760) 806-6150

**Rule 4.4**

**Backing on Papers Filed**

All wills and other testamentary documents submitted for filing must be attached to a blueback, the bottom right side margin of which contains the document's caption (title) which must be fully visible.

**Rule 4.7**

**Filing Documents for Calendared Matters**

**A.** The hearing date, time and department are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

**B. Petitions, Applications, and Accountings.** In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed directly with Probate Services no later than 12:00 noon, two court days prior to the hearing. Any document filed after the deadline will be considered "late" and may not be reviewed for the calendar hearing. No documents will be accepted for filing after 12:00 noon, the day of the hearing, and must instead be presented to the court at the time of hearing.

**C. Motions. Filing and service of Motions are governed by Code of Civil Procedure Section 1005. Section 4.17B, herein, does not apply to Law and Motion Practice. Law and Motion Practice is subject to California Rules of Court Division II.**

**~~C.D~~ Form and Lodging of Exhibits.** The foundation for exhibits submitted for the court's consideration must be set forth in appropriate declarations which must be filed with the court. However, if the exhibits accompanying a motion exceed ten pages cumulatively, they must be lodged with the court in accordance with E. below, rather than attached to the pleadings which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. Exhibits written in a foreign language must be accompanied by a translation certified by a qualified interpreter.

**D.E Accounting Format.** Accounting schedules must be filed with the court and not lodged or attached as exhibits.

**E. F Lodged Documents.** The provisions of rule 319 of the California Rules of Court regarding lodged material will be followed by this court. In the alternative, an attorney service pick-up slip may be submitted with the lodged materials. If the lodged material is not accompanied by either a stamped, self-addressed envelope or an attorney service pick-up slip, the clerk is authorized to refuse to accept lodged material. If the clerk is persuaded to accept the material despite non-compliance with the above, the risk of loss is on counsel and it is solely the responsibility of counsel to arrange for retrieval of the material at counsel's expense within five court days of the date of the hearing. Papers not retrieved within five court days may be disposed of without further notice to counsel.

**F.G Lodgments.** A Notice of Lodgment listing all of the items lodged shall be filed and served on all appearing parties at the time any matter is lodged with the court. The documents lodged with the court shall also be tabbed or paginated to correlate to the Notice of Lodgment. The Notice of Lodgment and the extra copy of the Notice will be filed stamped by the court. Following the return of the lodged documents by the court, the party lodging them shall retain them until the applicable appeal period has expired

**G.H Fax Filing.** A document may be filed by fax in accordance with California Rules of Court, rules 2001-2009. However, ~~the entire document must be submitted "by Fax" and must not be intermingled with original pages.~~

#### **Rule 4.14**

##### **Continuances**

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioning counsel or a petitioner acting without an attorney. Continuance may not be granted ~~after 11:00am~~ on the date of the hearing, unless requested and granted through Telecourt as stated at Rule 4.25 of Division IV (Section 1) of the San Diego Court Rules or by the court when the matter is called for hearing.

C. A first ~~and second~~ continuance of two weeks or more may be obtained by calling the Probate ~~Business Office~~ Examiner.

#### **Rule 4.15**

##### **Setting Matters Already on File**

A. When a petition is on file but not set for hearing, it will be set by the probate ~~calendar clerk~~ examiner upon request. The request must be in writing and a notice of hearing must accompany the request. A petition which has become out-of-date will be denied a new setting date and a new petition will be required to be filed.

#### **Rule 4.17**

##### **Additional Notice Requirements**

E. Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters Administration are requested; or when a non-resident of the United States is proposed.

F. 30 days "Notice of Hearing" to the Department of Health Services is required on petitions requesting approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.

#### **Rule 4.25**

##### **Appearance of Counsel by Telephone**

A. In the downtown San Diego court, if an uncontested matter has not been preapproved, counsel may appear by a telephone call to the probate judge on the day of the hearing ~~between 11 a.m. and 11:30 a.m., or such other time as designated by the~~



probate judge and posted on the court's website. The phone number for this "Telecourt" in San Diego is (619) 687-2023. Counsel must be on the phone line when the call is answered

#### **Rule 4.27**

##### **Material to be Included in Probate Orders**

(4) A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

#### **Rule 4.30**

##### **Application for Ex Parte Orders - Generally**

D. The court requires 24 hours notice to all parties entitled to notice. Every ex parte application must be accompanied by a written declaration of such notice or of the reason it was not given. For specific requirements, consult department rules and local rules concerning the specific petition which is to be submitted.

E. Filing fees must be paid and a case number issued before a party presents an ex parte application. This includes a petition for letters of special administration where no petition for probate is first filed and in those cases the ex parte petition will be filed to open the case and a conformed copy of that filed petition must be presented for the ex parte application. If a request for waiver of fees is presented, the underlying petition will be filed, however in the instance where a judicial officer must approve the waiver of fees, and ex parte application is required to be submitted with that request.

F. All papers presented for ex parte consideration must be presented with an appropriate "Ex Parte Application" coversheet. Coversheets are available at the Probate Business Office or on the court's website. Coversheets must be presented on green paper. All ex parte applications will be filed with the court irrespective of whether the relief sought was granted or denied.

#### **Rule 4.33**

##### **Communications with the Court**

Document presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are in violation of the Canons of the Court ad and may not be filed or reviewed by the Court or staff.

#### **Rule 4.37**

##### **Deposited Funds (~~Blocked Accounts~~)**

~~A. Cash may be deposited in blocked accounts subject to withdrawal only on order of the court. Such deposits must be in this state in a bank, credit union, or insured savings and loan. Cash may not be deposited with any other institution to qualify for a blocked account. Unless specifically authorized by the court, all cash must be deposited in a fully insured account with a bank, credit union, trust company or savings and loan. The depositing party will allege the nature and location of the account and the fact of insurance at the time of an accounting and report.~~

~~B. Cash so deposited~~ Money deposited into a blocked account will be excluded in computing the amount of bond necessary.

~~E. When the receipt of the depository cannot be returned within the three-week period for good cause, an ex parte applications may be presented by counsel showing the cause, along with an ex parte order extending the time to return the receipt. Good cause might be the non-closing of escrow, and a reasonable extension would be an additional three weeks. When there is good cause for failure to comply with paragraph "D", a party may present an ex parte petition to extend the time to return the receipt.~~

#### **Rule 4.38A**

##### **Letters Issued in Decedent's Estates**

A. Letters issued in a decedent's decedent's estate will expire 18 months after the date the underlying petition is approved.

B. At the hearing where the court approves the petition for administration and for letters to issue, a review hearing will be set for no later than 18 months.

C. At the time of the review hearing, if the estate has been closed or the report required by Probate Code Section 12200 has been filed, the review hearing will be

taken off calendar. If the estate has not been closed **and the report required by Probate Code Section 12200 has not been filed**, the petitioner will be ordered to file a Status Report under Probate Code Section 12200 and **to show cause why sanctions should not be imposed pursuant to CCP 177.5 and/or 575.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing.** ~~report why the estate has not been closed.~~ The court may make additional orders as, in the court's discretion, is appropriate.

**D. Petitioners must file the report required by Probate Code Section 12200 prior to the review hearing. Failure to file the report may result in sanctions pursuant to CCP 177.5 and/or 575.5, and/or a reduction in the statutory fees.**

#### **Rule 4.46**

##### **Bonding of Personal Representatives**

**C.** Any request for a waiver of bond **by a resident personal representative** must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim. **Non-resident personal representatives are subject to a minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by a waiver in the will.**

#### **Rule 4.53**

##### **Proceedings to Establish Fact of Death**

**F.** A petition to establish the fact of death of an individual under Health & Safety Code section ~~40340~~ **103450** is a separate proceeding from the petition identified in (A), above. Upon filing a petition under Health & Safety Code section ~~40340~~ **103450**, a hearing will be set not less than five nor more than 10 days after the filing of a petition.

#### **Rule 4.54**

##### **Independent Administration**

**A. Notice of Proposed Action will be required for the sale of a Mobile Home value at or above \$50,000.**

#### **Rule 4.61**

##### **Notice to Creditors**

**B.** Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court **prior to or with the filing of a petition for distribution.**

#### **Rule 4.66**

##### **Special Creditors' Claims**

**B.** Public entities' creditor's claims are governed by Probate Code section 9200, et seq., and may be barred only after actual notice is sent **to** the entity and the applicable claim period has expired.

**C.** Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code, Section 140095. ~~The proper address for service is Department of Health Services, P.O. Box 2471, Sacramento, CA 95812-2471.~~

#### **Rule 4.71**

##### **Commissions on Sale of Real Property**

**B.** The court must be advised whether the broker is, or has a financial **any** interest in, the purchaser. (See Prob. Code § 10160.5.)

#### **Rule 4.86**

##### **Required Form of Accounts**

**A.** All accounts filed in probate proceedings, including guardianship, conservatorship, trust and decedents' estates, must set forth the beginning and ending

dates of the account period and conform to Probate Code sections 1061 through 1063  
4.

#### **Rule 4.98**

##### **Assignment of Interest in Estate**

~~When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment and that it was voluntarily made and was not grossly unreasonable.~~  
(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

and move to ....

#### **Rule 4.112**

~~This section intentionally left blank  
(Adopted 1/1/90, Renumbered 7/1/2001, Repealed 7/1/2002)~~

##### **Assignment of Interest in Estate**

**When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment and that it was voluntarily made and was not grossly unreasonable.**

**(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002, renumbered 1/1/04)**

#### **Rule 4.104**

##### **Allowance on Account of Fees and Commissions**

~~Allowance on account of statutory fees or commissions may be granted by the court only in proportion to the work actually completed, and in no event may more than 75 percent of the statutory fees or commissions be allowed prior to the approval of the final account and the order of distribution. No allowance of said fees will be granted before an accounting is filed and approved.~~

#### **Rule 4.107**

##### **Office and Travel Expense**

**A.** Ordinary office expenses and travel incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel outside of San Diego County on estate business.

2. The court may allow travel expenses within San Diego County or unusual office expenses such as photocopying, express mail, postage, or long distance phone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate.

#### **Rule 4.113**

##### **Preliminary Distribution Bond**

**A.** If a preliminary distribution is made before the time for filing creditors claims has expired, a bond must be furnished by the distributees in an amount set at the discretion of the court.

#### **Rule 4.114**

##### **Interest on General Pecuniary Legacies**

~~The court will strictly enforce the Probate Code provisions for the payment of interest on general pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the will. (See Probate Code, §§ 12001 and 12003.)~~

**Reserved for future use.**

#### **Rule 4.115**

##### **Receipts on Partial Preliminary Distribution**

Receipts for property received in partial Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.116(A) and (B)

#### **Rule 4.116**

##### **Receipts on Final Distribution**

**A.** Receipts for property received on final distribution must be signed by the (1) distributee personally (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney is in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

~~The court may not accept receipts signed by an attorney-in-fact.~~

**B.** A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.

#### **Rule 4.118**

##### **Supplemental Accountings with Final Discharge**

Unless the accounting is waived by the heirs or beneficiaries, Supplemental accountings must be submitted for review when ~~\$500—\$10,000~~ more than \$2500 is withheld at the time of the final accountings. For withheld amounts over \$10,000, a hearing date will be set and notice is required. The accounting must be for the amount withheld only.

#### **Rule 4.120**

##### **Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information**

~~G. In compliance with the Due Process in Competence Determination Act, the court will appoint a conservator of the estate only if evidence is presented to support a finding of lack of capacity to make decisions or do other acts as required by section 811. In uncontested cases, and until contrary authority is provided, the court will accept as evidence a separate verified declaration attesting to a deficit in at least one of the mental functions as set forth in section 811, which declaration must be attached to the original petition for appointment of a conservator of the estate. The Judicial Council form "Capacity Declaration" in and of itself is not sufficient for this purpose.~~ The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

#### **Rule 4.123**

##### **Dementia Authority**

**C.** Capacity Declaration (PR-32) must be filed in support, but must address each required finding per Probate Code section 2356.5 (f)(3) and therefore an additional declaration of physician must may be furnished.

**H.** A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required. ~~J. Dementia authority will not be granted to a limited conservator as a limited conservatee would not meet the definition for dementia per DSM IV.~~

~~K J.~~ The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.

~~L K.~~ A Petition for exclusive medical authority which includes dementia authority, or a petition for dementia authority, requires an order prescribing notice. The court will require 15 days notice, with a copy of the petition, to the conservatee, conservatee's spouse, domestic partner, and relatives in the second degree. An "Order Prescribing Notice" need not be submitted in addition to the requirements of this subsection.

#### **Rule 4.138**

##### **Fees for Conservators and Counsel**

D.Conservators must submit a completed Probate Court approved “Fee Request Declaration” with all requests for compensation in excess of \$750.00

**Rule 4.140 Allegations Re Taxes EADACPA Proceedings**

Reserved for Future Use See rule 4.139D.

When a civil action has been filed which cites the “Elder Abuse and Dependent Adult Civil Protection Act” (EADACPA), pursuant to CA Welfare & Institutions Code §§ 15600 et seq., that action shall be transferred to the Probate Court for litigation as required by Local Rule 2.42

**Rule 4.145**

**Nomination by Minor**

~~When the minor is 12 years of age or older, a nomination of the proposed guardian must be made by the minor. Local Form, “Nomination of Guardian” (PR-125) is available for the purpose.~~

**Rule 4.147**

**Requested Waiver of Notice– Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents**

~~Reserved for Future Use.~~ **Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the Juvenile proceedings pursuant to the request and direction of the juvenile court.**

**Rule 4.148**

**(1) Guardianship of the Person, and/or Person and Estate-Relative.**

~~3. All guardianship petitions of the person require counsel to send notice to the local agency investigating guardianships. (See Prob. Code section 1516 and 1542.) The actual screening for neglect or abuse will be done by either Health and Human Services Agency or Family Court Services, depending upon which agency is responsible for the investigation of the guardianship of the person.~~

~~(4) B If waiver of investigation is sought, the request must be made in advance of the hearing to provide sufficient time for review and processing. At least 10 days must be allowed.~~

~~B. In the case where a Court Appointed Attorney has been ordered to file a report, the report must be filed with the court no later than five days prior to the hearing.~~

**Reason:** Paragraph 3 is removed as repetitive of code and other subsections under this rule. Subsection (4) is labeled correctly at B and old B is removed as more appropriately placed at 4.158.

**Rule 4.157**

**Final Account**

~~A. A final account must be made upon a minor's reaching majority. The court will require a final report in all cases. Upon waiver of accounting by the former minor, the court may require the minor to appear at any hearing regarding the waiver of a final account.~~

**Rule 4.158**

**Guardian Ad Litem**

~~A. The court, on its own motion or on the request of an interested person, may appoint a guardian ad litem to protect the interests of a minor in connection with Probate Code matters only.~~

~~B. A guardian ad litem may be appointed to represent several persons or interests when no conflict of interest precludes such appointment~~

~~C. The petition must suggest an independent individual to be appointed or request the court make such appointment.~~

- ~~D. The court may award appropriate fees to the guardian ad litem and determine by whom such fees will be paid, usually upon termination of the guardian ad litem's representation.~~

**Add: 4.158 Court Appointed Attorney and Guardian ad Litem**

- A. Any party petitioning for appointment of a guardian ad litem must recommend the person to be appointed or must request the court make a selection.
- B. Any report required of a court appointed attorney or guardian ad litem must be filed no later than five days before the scheduled hearing.

**Rule 4.161**

**~~Notice to Beneficiaries~~**

~~Notice must be mailed to all vested or contingent beneficiaries pursuant to the Probate Code at least 30 days before the hearing. Notice must be given to the trustee, if the trustee is not the petitioner.~~

**Identification of Persons Entitled to Notice**

In addition to the requirements of Probate Code 17201 to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee will likewise be identified by name, address and relationship to the trustor(s).

**Rule 4.162A**

**Special Needs Trusts**

3. The requirement of an accounting to the beneficiary, and to the Probate Court if the trust is to be submitted to the Probate Court's jurisdiction.

**Rule 4.167A:**

**Declaratory Relief Petitions**

**(Probate Code Section 21320)**

- A. A copy of the proposed, unsigned and unverified petition marked "proposed" below the caption, must be attached to the 21320 application which is set for hearing.
- B. If the court determines the proposed petition or a portion thereof would not violate the no contest clause contained in the instrument, a duplicate original of the proposed petition, or the approved portion thereof, signed and verified must be filed with the court and set for hearing. The wording "proposed" must be deleted from the petition to the filed.

~~C. Notice of the proposed petition, once filed with the court is to be given as set forth in the applicable code section for that petition.~~

**DIVISION V**  
**FAMILY LAW**  
**PROPOSED RULES EFFECTIVE 1/1/05**

**CHAPTER 1**  
**GENERAL**

**RULE 5.1 APPLICABILITY OF RULES**

These rules are intended to provide uniformity of practice and procedure in all departments of the San Diego Superior Court hearing and deciding Family Law matters. Variations between divisions must be approved by the Supervising Judge of the Family Courts and shall not constitute a significant deviation from these rules. All litigants and attorneys shall comply with these rules in addition to all applicable statutes and California Rules of Court. Litigants representing themselves without an attorney and all attorneys shall be held to the same standards of practice and procedure. The Court is not permitted to provide legal assistance to unrepresented litigants. All references to "counsel" and/or "attorney" in these rules shall apply to any unrepresented litigant.

**RULE 5.2 COURT LOCATIONS**

The Central Division, Family Law Courthouse ("Central Division") is located at 1555 Sixth Avenue, San Diego. The South County Division ("South County") is located at 500 Third Avenue, Chula Vista. The East County Division ("East County") is located at 250 East Main Street, El Cajon. The North County Division ("North County") is located at 325 South Melrose Drive, Vista. Each Division is a separate Division and a separate venue.

Support enforcement actions filed by the Department of Child Support Services of the County of San Diego shall be heard at the Central Division, County Courthouse located at 220 West Broadway, San Diego, and at such other Division locations as directed by the Supervising Judge of the Family Law Courts.

Domestic Violence Protection Act cases for the Central Division are filed and heard at the Madge Bradley Building, located at 1409 Fourth Avenue, San Diego and each of the South County, East County and North County Divisions.

**RULE 5.3 WORK OF THE FAMILY LAW COURT**

The Family Law Divisions of the San Diego Superior Court hear all motions and trials in Family Law matters including, but not limited to, warrants in lieu of writ of habeas corpus, warrants for arrest in child custody matters, motions to determine arrearages due on support orders, motions for support, custody, visitation, restraining orders and attorney's fees and costs, in addition to applications under the Domestic Violence Prevention Act, the Uniform Parentage Act, Marvin actions and related discovery motions.

**RULE 5.4 WORDS AND PHRASES DEFINED**

Unless the provision or context otherwise requires, these definitions govern the construction of these rules.

"Child" includes the plural "children" where the context requires.

**“Declaration of Disclosure”** is a statement under penalty of perjury that is a complete and accurate listing of all assets and liabilities in which one or both of the parties have an interest regardless of its characterization as community or separate property. (Family Code 2103, 2104 and 2105.)

**“Settlement Brief”** (See **Appendix E** for format. The format is the same as for the Mandatory Trial Statement.) is a document prepared by each party setting forth the same information as required in the Mandatory Trial Statement in addition to the Preliminary Declaration of Disclosure and a current Income and Expense Declaration.

**"Shall"** is mandatory, and **"will"** or **"may"** are permissive.

**“Mandatory Trial Statement”** (See **Appendix E** for format.) is a document prepared by each party setting forth the statistical data for the case; the resolved and disputed issues; the known financial information; the history of the proceedings; and a list of the proposed exhibits to be presented at trial.

**“Unrepresented Litigant”, “Pro Per”, “Pro Se” and “In Propria Persona”** shall mean any litigant or party who is representing himself or herself in a Family Law matter without an attorney.

**“Writing”** shall include any handwriting, typewriting, printing, photostating, photograph, photographing, photocopy, photocopying, transmission by electronic mail or facsimile (“FAX”) and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

## **RULE 5.5 APPLICABLE ABBREVIATIONS**

The following abbreviations are used throughout these rules:

CCC = Case Classification Conference  
CLETS = California Law Enforcement Telecommunications System  
CMC = Case Management Conference  
CRC = California Rules of Court  
DCSS = Department of Child Support Services, County of San Diego  
DVPO = Domestic Violence Protective Order  
EPO = Emergency Protective Order  
Fam.C. = California Family Code  
FCS = Family Court Services  
FSD = Family Support Division  
MSC = Mandatory Settlement Conference  
OSC = Order to Show Cause  
TRO = Temporary Restraining Order  
UCCJEA = Uniform Child Custody Jurisdiction and Enforcement Act

## **RULE 5.6 TIME ESTIMATES**

Each Family Law case is calendared based on the time estimates given. The Court must rely on the accuracy of the time estimates to properly manage the Court’s calendar. Counsel and the parties should expect to be limited to the time estimate given. A failure to abide by the time estimate given may result in a mistrial being declared by the Court or an award of appropriate sanctions. The time estimate must include time for the Court to review the file and time for argument.



## CHAPTER 2 CASEFLOW MANAGEMENT

### RULE 5.7 CASE ASSIGNMENT

This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure section 170.6 and California Government Code § 68616(i).

### RULE 5.8 ALTERNATIVE DISPUTE RESOLUTION

The Family Law Act and the California Rules of Court encourage Alternative Dispute Resolution of Family Law matters. The Family Law Court promotes and encourages the use of mediation, arbitration, Collaborative Family Law, a private judge (Judge Pro Tempore) and, when appropriate, judicial case management as methods of Alternative Dispute Resolution in Family Law cases.

#### A. Mediation or Arbitration

Upon being retained, attorneys representing Family Law litigants, except in cases of domestic violence, are encouraged to provide their clients with the informational notice set forth in **Appendix B** and to advise their clients of the availability of mediation and arbitration as alternative means of dispute resolution. Parties wishing to participate in mediation or arbitration shall advise the Court as soon as possible by submitting a written stipulation signed by both parties and their attorneys, if the parties are represented. Where known, the name of the Mediator or Arbitrator selected by the parties shall be included in the written stipulation. The parties shall specify in their stipulation whether the decisions of their Arbitrator are to be binding or nonbinding.

#### B. Collaborative Family Law

1. A case will be designated a "Collaborative Family Law" case if the parties have signed and filed with the Court a written Collaborative Family Law stipulation which provides that:

- a) The parties will engage in the full and candid informal exchange of all relevant information and documentation;
- b) The collaborative attorneys are disqualified from continuing to represent the parties if the Collaborative Family Law process is terminated by either party;
- c) The parties will jointly retain any experts needed to assist them in reaching a collaborative settlement;
- d) All documents filed in the case will be submitted by the parties in propria persona;
- e) No contested matters will be presented for determination by the Court either by Motion or Order to Show Cause while the case is proceeding as a Collaborative Family Law case; and
- f) The words "**Collaborative Family Law Case**" will be included in the caption of every document filed with the Court.

2. The essence of the Collaborative Family Law process is a series of intense settlement negotiations. Therefore, pursuant to the written Collaborative Family Law stipulation of the parties:

- a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the Collaborative Family Law process will be admissible as evidence or subject to discovery, and disclosure of such will not be compelled in any non-criminal proceeding;
- b) No writing (as defined in Evidence 250) that is prepared for the purpose of, in the course of, or pursuant to a Collaborative Family Law case will be admissible or subject to discovery, and disclosure of the writing will not be compelled in any non-criminal proceeding; and
- c) All communications, negotiations, and/or settlement discussions by and between the participants in a Collaborative Family Law case will remain confidential.

3. In any Collaborative Family Law case, pursuant to the written Collaborative Family Law

stipulation of the parties, the Court will:

- a) Consider collaborative counsel to be advisory counsel and not attorneys "of record";
  - b) Refuse to schedule any contested hearings, impose discovery deadlines, or enter any scheduling orders; and
  - c) Provide notice and an opportunity to be heard prior to any dismissal based on a failure to prosecute or delay.
4. The designation of a case as a Collaborative Family Law case is completely voluntary and requires the agreement of all parties. The Collaborative Family Law case designation shall be removed by the Court upon stipulation of the parties or upon the filing of a noticed motion with the Court indicating a party's desire to terminate the Collaborative Family Law process and compliance with any termination provisions of the written Collaborative Family Law stipulation.
5. Except as otherwise set forth in this Rule, Collaborative Family Law cases shall be governed by California law.

### **C. Use of a Private Judge (Judge Pro Tempore)**

With the Court's permission, the parties may agree to use a Private Judge (Judge Pro Tempore) to resolve some or all of the substantive or procedural issues in their case. Parties wishing to use a Private Judge shall advise the Court as soon as possible by submitting a written stipulation signed by both parties and their attorneys, if the parties are represented. The name of the Private Judge selected by the parties and the specific issues to be resolved by the Private Judge, if less than the entire case, shall be included in the written stipulation. The parties' written stipulation must also set forth their agreement regarding whether a transcript of the proceedings before the Private Judge will be created for appellate or any other purposes. A sample form Stipulation and Order for the Appointment of a Judge Pro Tempore is attached as **Appendix C**. Under no circumstances shall the Court's case file be removed from the Courthouse. It is the responsibility of the parties to provide the Private Judge with a duplicate case file.

### **D. Judicial Case Management**

Attorneys representing Family Law litigants are also encouraged to advise their clients of the availability in appropriate cases of judicial case management under Family Code section 2032, subdivision (d).

## **RULE 5.9 FILING LOCATIONS**

Family Law cases must be filed in the division in which the Petitioner and/or the Respondent reside, or, in paternity cases, where the child resides. **Appendix D** reflects the division boundaries within the Court sorted by zip codes. Original petitions must bear the proper filing location and be filed in the appropriate division.

### **RULE 5.10 MARVIN ACTIONS**

Any Family Law related actions not specifically authorized by the Family Law Act (e.g., Marvin complaints) must initially be filed as a separate proceeding in the Family Law Division. Upon the Court's own motion or if a timely request for a jury trial is made and granted, the assigned judicial officer shall consult with the supervising judge to determine whether the matter will remain in the Family Law Division for trial. On the Court's own motion or upon noticed motion, the action may be consolidated with a pending Family Law case pursuant to California Rules of Court, Rule 367. (See also Local Rule 5.11.)

### **RULE 5.11 CONSOLIDATED CASES**

If the Court consolidates a case, the case of broader jurisdiction or the lower case number if the cases are of equal jurisdiction shall be designated as the lead case. The originals of all papers thereafter filed shall be placed in the lead case file. (California Rules of Court, Rule 367.) Any hearing date in any case other than the lead case shall be vacated or reset, and all future hearing dates shall be noticed under the lead case number.

## **RULE 5.12 CASE CLASSIFICATION CONFERENCE (“CCC”)**

The Court shall calendar a Case Classification Conference (CCC) for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested that the CCC be held earlier or the parties have filed an ADR/ Reconciliation stipulation pursuant to sections C and D below.

**A. Purpose.** The purpose of the CCC is to assess which track best suits the case’s particular needs. The parties or, if represented, their attorneys shall be prepared to advise the Court of which track best suits their case. At the discretion of the judge, the case will be assigned to one of the following tracks:

**1. Conventional.** The case is ready to proceed to Judgment without delay. Cases in which neither party is represented by an attorney will generally be classified as Conventional and will be processed by the Family Law Facilitator’s Office.

**2. Diverted.** A case where the parties have decided to use an Alternate Dispute Resolution (“ADR”) method to resolve their case including but not limited to mediation, arbitration, Collaborative Family Law, or private judging or where the parties are attempting a reconciliation. These cases will be classified as Diverted at the time the ADR/Reconciliation stipulation is filed.

**3. Managed.** Any case which is not classified as Conventional or Diverted.

**B. Scheduling and Notice.** The Court will provide notice of the CCC to all parties. Each party may request one continuance by telephone up to 1 day before the scheduled conference date for a reasonable period of time. The continuance must be by stipulation if Respondent has appeared. Additional continuances may be requested ex parte with a declaration showing good cause.

**C. Alternate Dispute Resolution (ADR).** Parties who file a stipulation indicating they are presently participating in ADR including but not limited to mediation, arbitration, Collaborative Family Law, or private judging, shall be exempt from the CCC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the Court will notice the case for a CCC.

**D. Reconciliation.** Parties who file a stipulation indicating they are attempting a reconciliation shall be exempt from the CCC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the Court will notice the case for a CCC.

### **E. Preparation for Case Classification Conference.**

**1.** Prior to the CCC, the parties shall meet and confer to best determine the classification of their case.

**2.** If the parties determine that their case should be classified as Conventional, then no later than 7 calendar days prior to the CCC, the parties shall serve completed Preliminary Disclosure documents to include the Schedule of Assets and Debts and the Income and Expense Declaration.

**3.** If the parties determine that their case should be classified as Managed, the Court at the CCC will set a date for the exchange of the Preliminary Declarations of Disclosure (DOD), if they have not already been exchanged.

**F. Attendance at Case Classification Conference.** Parties shall be present at the CCC unless represented by counsel, in which case, counsel shall appear.

**G. Orders.** The Court may make the following orders at the CCC:

**1. Conventional.** Set a Case Management Conference (CMC), set a Mandatory Settlement Conference (MSC), set a trial date upon confirmation that all first paper fees have been paid, or enter judgment.

- 2. Managed.** Set another CCC or set a CMC and, if necessary, set a date for the exchange of the preliminary DOD.
- 3. Stipulation.** Upon stipulation of the parties or their attorneys treat the CCC as a CMC.

#### **RULE 5.13 CASE MANAGEMENT CONFERENCE (CMC)**

**A. Attendance at Conference.** Parties shall be present at the Case Management Conference (CMC) unless represented by counsel, in which case, counsel shall appear. The parties or the attorneys shall be fully prepared to discuss the timetable for resolution and be sufficiently familiar with the facts of the case so that the Court may make the orders set forth in B, below. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case.

**B. Orders.** The Court may make the following orders at the CMC:

1. Set a Mandatory Settlement Conference or set a trial date for short cause matters (i.e., those cases which will take no more than 3 hours to try) upon confirmation that all first paper fees have been paid.
2. Set a date for the exchange of Final Declarations of Disclosure and the filing of proofs of service.
3. Set a discovery cut-off date.
4. Set a date for the exchange of expert witness information.
5. Set a Family Court Services (FCS) date in cases where custody/visitation is at issue and no evaluation or private mediation is pending or completed.
6. Resolve selection of joint experts.
7. Resolve appointments of Special Master requests made by stipulation pursuant to Code of Civil Procedure section 639 and California Rules of Court, rules 244.1 and 244.2.
8. Determine any issues to be bifurcated.
9. Set a date for the exchange and filing with the Court of a joint CMC Questionnaire which includes a list of settled issues and a list of issues to be litigated. Absent leave of court, a party may not present an issue for trial that was not set forth in the CMC list of issues to be litigated.
10. Set an MSC after counsel, or unrepresented party, certify that all first paper fees have been paid, all discovery is complete, no law and motion matters are pending or anticipated, and all expert reports have been exchanged. The Court, in its discretion, may set an MSC without these certifications. If an MSC is unable to proceed because counsel or a party has improperly certified the case, the matter will be returned for another CMC before the assigned judge, who may impose monetary sanctions against counsel or a party for improperly certifying the case as being ready for the MSC.
11. Any other orders the Court deems appropriate for the expeditious resolution of the case to include the setting of another CMC.

**C. Sanctions for Noncompliance.** For any noncompliance with this rule or the Court's orders, the Court may set an order to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 575.2.

#### **RULE 5.14 MANDATORY SETTLEMENT CONFERENCE**

**A. Calendaring.** Unless specifically exempted by the Court, no Family Law case will be set for trial until the parties participate in a Mandatory Settlement Conference ("MSC"). The MSC will be set at the final Case Management Conference or the Case Classification Conference. Absent a court order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the MSC. Failure to comply may result in monetary sanctions. Counsel and parties must be present for the calendar call, during which time the Court will explain the process and assign locations for the settlement conferences. Because of the time settlement judges spend reading the briefs and preparing for the conference, there shall be NO continuances granted on the day of the MSC.

**B. Attorney Participation on the Settlement Conference Panel.** Whenever possible, an experienced Family Law attorney will be assigned as a temporary judge (Judge Pro Tem) to each case to assist the parties and trial counsel in reaching a settlement. If available, two Pro Tem Judges will be assigned to more complex cases. The Supervising Judge and any judges not otherwise engaged may be available for additional assistance.

Approximately 6 months before the date(s) of service, the Court will mail invitations to Family Law attorneys to participate on the settlement conference panel. If an invited attorney wishes to participate, the attorney shall mail written acceptance to the Court forthwith and calendar the date(s) of service. The Court will telephone confirmations to the panelists not later than the Monday immediately preceding the Thursday settlement conference date. An experienced panelist will be assigned to sit with each new panelist as a co-panelist during the new panelist's first 2 settlement conferences.

The minimum qualifications for service on a settlement conference panel hearing most cases are:

1. Certified Family Law Specialist; or
2. 7 years of legal practice, of which at least 75% is in Family Law; AND
3. Attendance at the CFLS-sponsored settlement conference seminar; or commitment to attend the CFLS-sponsored settlement conference seminar to be presented or a comparable seminar, or listen to the tapes from the seminar; AND
4. Approval of the Supervising Judge of the Family Law Courts.

The minimum qualifications for service on a settlement conference panel hearing more complex cases are:

1. Certified Family Law Specialist; or
2. 15 years of legal practice of which at least 90% is in Family Law; AND
3. Approval of the Supervising Judge of the Family Law Courts.

**C. Telephone Confirmation With Calendar Clerk.** At least 10 calendar days in advance of the MSC, counsel shall call the Court to confirm that the MSC will go forward. An MSC will only be continued for good cause. The Court will generally notify counsel who the settlement judge(s) will be at this time. Where the MSC is not timely confirmed, the Court will return the matter for a CMC before the assigned judge.

**D. Meet and Confer Requirement.** Counsel shall meet and confer either in person or by telephone at least 5 court days before the MSC to resolve as many issues as possible and to specify those matters to be litigated. Results of the conference shall be included in the settlement brief. Failure to comply with these requirements may subject non-complying counsel to monetary sanctions pursuant to Code of Civil Procedure section 575.2.

**E. Settlement Briefs.** Each party shall prepare a settlement brief. Documents to be submitted to the settlement judges include the Preliminary Declaration of Disclosure and, if support or fees are at issue, a current Income and Expense Declaration. Each party shall serve a copy of each document on opposing counsel and the settlement judges in such a manner as to ensure they are received no later than 4:00 p.m. the Monday preceding the MSC. The settlement briefs shall be in the same format as the Mandatory Trial Statement (**Appendix E**). Each party shall state with specificity that party's proposal on each contested issue and the reasons therefor. Income and Expense Declarations shall include the attachments described in local rule 5.50.

**F. Division of Furniture, Furnishings and Personal Effects.** If the parties have been unable to divide their furniture, furnishings and personal effects by agreement, the parties shall jointly prepare a combined list of these items at the time they meet and confer. This list shall be attached to each party's settlement brief. The list shall include a description of each item, and (opposite that item) each party's position concerning value, character (separate or community),

and the proposed disposition of the asset.

**G. Epstein Credit Claims.** If a party is claiming reimbursement for payment of community debts from separate funds following separation, that party must fully document these claims by attaching to the settlement brief all documents to be introduced into evidence on this issue at trial. Absent court order obtained before trial, or for other good cause shown, no other documentary evidence in support of this claim may be introduced or considered by the trial court. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

**H. Family Code Section 2640 Reimbursement Claims.** A party claiming reimbursement pursuant to Family Code section 2640 shall attach to the settlement brief any documentary evidence which that party intends to introduce at the time of trial to substantiate the claim(s). This includes canceled checks, bank statements, title documents, escrow documents, etc. Absent court order obtained before trial, no other documentary evidence in support of this claim may be introduced or considered by the trial court. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

**I. Reference to Special Master.** Failure to meet the requirements set forth in sections **F**, **G**, and **H** above may result in those issues being referred to a Special Master pursuant to Code of Civil Procedure section 639. Any costs relating to proceedings before the Special Master will be borne by one or both of the parties as ordered by the Court.

**J. Valuation of Vehicles.** Current *Kelley Blue Book* values, whether obtained from the current printed book or from the *Kelley Blue Book* on-line service ([www.kbb.com](http://www.kbb.com)), for all vehicles will be accepted into evidence without further foundation. There will be a rebuttable presumption that the value of the vehicle in question is midway between the "wholesale" and "retail" values, or the on-line "trade-in" and "retail" values, with appropriate adjustments for extras and mileage. Copies of the relevant *Kelley Blue Book* information for all vehicles whose value is in issue shall be attached to both parties' settlement briefs.

**K. Trial Setting When Case Does Not Settle.** If a case does not settle then the settlement judge and counsel for each party, or the parties if unrepresented, shall complete, execute and return the Family Settlement Conference At Issue Form (SUPCT D-116 – **Appendix F**) to the clerk of the department managing the settlement calendar prior to adjourning the settlement conference. The parties will then be directed to the assigned judge for trial setting.

### **CHAPTER 3 EX PARTE MATTERS**

#### **EX PARTE REQUESTS ARE INTENDED FOR EMERGENCY RELIEF ONLY**

**A. *RULE 5.15 TIME FOR EX PARTE MATTERS***

Ex parte matters shall be heard in all Divisions, including the Family Support Division and Madge Bradley Building, beginning at 8:30 a.m. on Monday through Friday.

Ex parte matters may be also heard on Wednesday afternoon beginning at 1:30 p.m. in the Central and South County Divisions. The North County, East County and Family Support Divisions also hear ex parte matters beginning at 1:30 p.m. on Monday through Friday.

Additional ex parte hours may be set by the judicial officers of each Division with the

concurrence of the Supervising Judge of the Family Law Courts. Notice of such additional ex parte hours will be posted in each of the Divisions of the Court.

A judicial officer of any Division of the Family Court may hear an emergency ex parte request at any time that the business of the Court permits during its normal business hours.

Ex parte requests will generally be heard and determined in open court and on the record except when, in the discretion of the judicial officer, such hearing would more properly be held in a semi-private setting and off the record.

***B. RULE 5.16 NOTICE TO OPPOSING COUNSEL***

Except as provided in Family Code section 6300, a party requesting an ex parte hearing shall notify the opposing counsel or party, including the Department of Child Support Services if appropriate, by no later than 10:00 a.m. on the previous court day. "Notice" of an ex parte appearance given by facsimile ("FAX") machine DOES NOT constitute notice under these rules unless this method of notice has been previously agreed upon by and between counsel or the unrepresented litigants. "Notice" of an ex parte appearance given by message left on a voice mail machine also DOES NOT constitute notice under these rules unless this method of notice has been previously agreed upon by and between counsel or the unrepresented litigants.

Counsel shall also provide a written description of the relief to be requested to opposing counsel or the other party no later than 12 p.m. on the previous court day. Service by facsimile ("FAX") of this written description of the relief to be requested is permitted. In appropriate circumstances the Court may waive the requirement for service of the written description of the relief to be requested.

The requesting counsel or party shall provide a Declaration of Notice to the Court at the time of the ex parte appearance. The Declaration of Notice shall include, under penalty of perjury, the details of how and to whom notice of the date, time and place of the ex parte hearing and a description of the relief to be requested was given, or a complete description of the good faith effort to provide such notice.

**RULE 5.17 EXCEPTIONS TO THE NOTICE REQUIREMENT**

~~Except as provided in Family Code section 6300, if the moving party alleges that notification may negate the benefit of the requested relief, or explains why notice could not be given, ex parte relief may be granted without the required notice. The Declaration re Notice shall set forth the factual basis upon which such claim is based. The parties may stipulate that notice is unnecessary.~~

***C. RULE 5.18 APPLICATION FOR AN EX PARTE APPEARANCE***

A case number must be issued before an application for an ex parte order may be made, including a request for a temporary restraining order, provisional remedy or any other emergency relief.

***D. RULE 5.19 REQUESTING THE COURT FILE BEFORE AN EX PARTE APPEARANCE***

When ex parte notice is given, counsel shall request that the Court file be made available to the judicial officer assigned to hear the ex parte matter. The telephone numbers for requesting the case file are: Central Division (619) 557-2073 or 557-2074; East County (619) 441-6770; South County (619) 691-4600; North County (760) 726-9595; and Family Support Division (for Department of Child Support Services matters) (619) 515-8849.

***E. RULE 5.20 ORDER OF HEARING EX PARTE MATTERS***

Judicial officers will hear ex parte matters in an order which will facilitate the matter for the Court and counsel and so as not to significantly interfere with the Court's normal calendar. Any opposed ex parte request which cannot be heard prior to the Court's normal calendar may be

added to the calendar and heard in due course.

**F. RULE 5.21 MEET AND CONFER**

If an ex parte request is contested, both sides shall meet and confer on the issue(s) in dispute. The meet and confer conference shall occur in a way that will ensure that all issues and positions of the parties have been discussed before appearing before the Court. Failure to comply with this rule may result in sanctions, including denial of the ex parte request.

**G. RULE 5.22 EX PARTE APPLICATION FORM**

The requesting party shall completely fill out the pre-printed NCR ex parte application form (SUPCT D-46). If the opposing party is present, the requesting party shall personally serve the opposing party with the ex parte application form. The completed form shall be presented to the judicial officer or the bailiff of the Court prior to the ex parte hearing.

**H. RULE 5.23 EVIDENTIARY DECLARATIONS**

The judicial officer will only consider ex parte requests that are supported by written evidentiary declarations that have been signed by the declarant under penalty of perjury. The ex parte declaration(s) shall describe why this request cannot be heard on the Court's regular motion calendar. The ex parte declaration(s) shall be filed with the Court and made a part of the Court's file. If the facts shown in the evidentiary declaration(s) do not justify the ex parte request, it will not be granted. A requesting party cannot verbally correct declarations at the ex parte hearing.

**I. RULE 5.24 EXCEPTIONS TO NOTICE, APPLICATION AND EVIDENTIARY REQUIREMENTS**

**A.** Requests for the following types of ex parte relief do not require notice to opposing counsel, an Ex Parte Application, or evidentiary declarations:

1. Signature of an order or judgment which opposing counsel has approved or agreed not to oppose;
2. Signature of an order or judgment after a default proceeding;
3. Wage and earning assignment order (See Rule 5.29);
4. Restoration of former name after judgment;
5. Order for publication or posting; and,
6. Order shortening time to depose Respondent within twenty days of service of summons.

**B.** The business office at each Division has a drop box where these ex parte requests may be deposited for processing. An attorney service slip or stamped return envelope should be included if conformed copies are requested.

**J. RULE 5.25 PROPOSED ORDER REQUIRED**

The requesting party shall give the judicial officer a proposed order at the time of the hearing. If the proposed order is not signed, the judicial officer shall write the words "NOT SIGNED" on the signature line of the proposed order. The original unsigned proposed order shall be placed in the Court file.

If the opposing counsel is present, the requesting party shall personally serve counsel with a copy of the proposed order. If the proposed order is contained in the Ex Parte Application form (SUPCT D-46), the requesting party shall file the original with the Court clerk and serve a copy on opposing counsel.

If the opposing counsel is not present, the requesting party shall serve counsel with a copy of the ex parte application form, evidentiary declarations and the proposed order, or final order if one is signed, by mail within 24 hours of the ex parte hearing.

**RULE 5.26 EX PARTE MOTIONS RE ORDER SHORTENING TIME FOR HEARING AND TAKING OF DEPOSITION**

When requesting an order shortening time for hearing and/or taking deposition, the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown, time for service may be shortened up to 2 court days before the hearing date and to 5 calendar days before the taking of a deposition.



Upon a proper supporting declaration, the business office in each Division may routinely grant an order shortening time for Respondent's deposition to a date that is within 20 calendar days after service of the Summons on the Respondent, pursuant to Code of Civil Procedure section 2025, subdivision (b)(2). Attorneys requesting an order shortening time for the taking of a deposition shall submit the following supporting declaration with their request:

**"I am an attorney at law duly licensed to practice in the State of California and the attorney for the Petitioner herein. For me to properly prepare for the order to show cause which is being filed at this time, I must depose the Respondent. I request that the Court shorten time so that Respondent may be deposed on [enter date]."**

**K. *RULE 5.27 EX PARTE MOTIONS RE CUSTODY AND VISITATION***

Pursuant to Family Code section 3061, an order regarding custody stipulated to by counsel may be signed by a judicial officer only when a copy of the custody agreement signed by the parties and counsel or an appropriate declaration is attached to the Petition.

Pursuant to Family Code section 3064, other than stipulated orders, ex parte orders regarding child custody and visitation will be granted only upon a clear showing of immediate harm to the child or immediate risk that the child will be removed from the State of California.

***RULE 5.28 EX PARTE REQUESTS REGARDING VACATION AND/OR HOLIDAY SCHEDULES***

Ex parte requests to change a child's vacation or to request a change to the holiday visitation schedule, or the school that the child attends, are disfavored. Requests for such changes should be presented on a regular motion calendar. A judicial officer may grant an order shortening time for such hearing.

**L. *RULE 5.29 EX PARTE MOTIONS RE EARNINGS ASSIGNMENT ORDERS***

Pursuant to Family Code section 5230, unless the order provides otherwise, all support orders made on or after July 1, 1990 are deemed payable by wage assignment. Earnings assignment orders may be granted ex parte for support orders made on or after July 1, 1990 by submitting the assignment order separately or with the underlying support order or judgment. Notice to the opposing counsel or party is not required.

Earnings assignment orders may be granted ex parte, pursuant to Family Code section 5252, for support orders made before July 1, 1990 by submitting an "Ex Parte Application For Earnings Assignment Order" (FL-430). An "Order/Notice to Withhold Income" (FL-195) for child support must be included. Spousal support may be included with this form. If only spousal support is ordered, then the "Earnings Assignment Order" (FL-435) for spousal support must be included. Notice to opposing counsel or party is not required.

Ex parte assignment orders for arrearages accrued under any support order may be requested by completing a declaration, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and amounts unpaid. Ex parte assignment orders for arrearages are granted without prejudice to subsequent attack by a motion to quash.

Attorneys' fees will not be granted ex parte for assignment orders. Fees incurred to obtain an assignment order for arrearages may be requested by a noticed motion set on a regular motion calendar.

**CHAPTER 4  
TEMPORARY RESTRAINING ORDERS (TRO's)**

***RULE 5.30 APPROPRIATE FORMS AND FILING WITH THE SHERIFF***

When seeking a TRO pending a court hearing, the current forms adopted by the Judicial Council shall be used. In all cases, including cases which are not filed under the Domestic Violence Protection Act, parties seeking personal conduct, stay away or residence exclusion orders must file an Order to Show Cause and Temporary Restraining

Order and an Application and Declaration for Order (Domestic Violence). If custody or visitation orders are requested, parties must also file a Child Custody, Visitation, and Support Attachment to Application and Declaration for Order, and a Child Custody Visitation Order Attachment.

In non-domestic violence cases where orders other than custody and personal conduct, stay away or residence exclusion are requested, parties must file an Order to Show Cause, an Application for Order and Supporting Declaration, and Temporary Orders. In non-domestic violence cases the party must prepare a declaration on a separate sheet and attach it to the Application. Supporting allegations in the declaration must refer to the same number as the order it supports on the temporary order form.

The Court will deliver a copy of the protective restraining order to the Sheriff for entry into the Department of Justice's computer system (CLETS). To be enforceable by a law enforcement agency the protected person must give a conformed, certified copy of the restraining order to the Office of the San Diego County Sheriff for service.

#### **RULE 5.31 RESIDENCE EXCLUSION ORDERS**

An ex parte order pursuant to Family Code section 6321(residence exclusion or "kick-out" order) requiring a party to vacate the family home shall be signed by a judicial officer only. Such orders shall be issued only upon a showing, by declaration, of ALL the following:

- That the party who will stay in the dwelling has a right under color of law to possession of the premises;
- That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and
- That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

If the foregoing guidelines preclude the issuance of an ex parte residence exclusion order, counsel may request an order shortening time for hearing and service.

If a residence exclusion order is granted, a separate removal order (Order For Removal From Residence, SDSC D-72) directing the Sheriff to assist in the removal shall be prepared and submitted to the Court for signature. Two certified copies of the removal order are required by the Sheriff.

#### **RULE 5.32 PERSONAL CONDUCT ORDERS**

An ex parte order pursuant to Family Code section 6320 restraining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Penal Code section 653m, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the Court, on a showing of good cause, of other named family or household members, shall be signed by a judicial officer only. Such orders shall be issued only upon a showing, by declaration, that abuse or physical violence has occurred or there is a threat of imminent abuse or physical violence. This showing shall include a DETAILED description of EACH episode of alleged abuse or physical violence, the date(s) of the episode(s), and of the other party's disposition toward violence, intoxication or use of drugs. Where the person sought to be restrained is a non-custodial parent, the appropriate box on the temporary order form must be checked. The Court may not issue a mutual order enjoining the parties from specific acts of abuse (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the Court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. (Family Code section 6305.)

#### **RULE 5.33 CUSTODY AND VISITATION ORDERS**

Restraining orders regarding custody and visitation shall be signed by a judicial officer only. A stipulated order regarding custody may be signed where a copy of the custody agreement or appropriate declaration is attached to the petition. (Family Code section 3061.) Pursuant to Family Code section 3064, ex parte orders regarding custody and visitation will only be granted upon a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. A motion requesting a change in a child's summer or holiday vacation schedule, or the school that the child attends, shall be presented sufficiently in advance to allow the Court to obtain any necessary information.

#### **RULE 5.34 RESTRAINT OF ACCOUNTS**

The Court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds. These orders shall be issued by a judicial officer only.

#### **RULE 5.35 RESTRAINING ORDERS ISSUED BY THE CLERK IN NON-DOMESTIC VIOLENCE CASES**

The business office has been authorized to issue certain TRO's in cases that are not filed under the Domestic Violence Protection Act. The clerk's duties are strictly ministerial. Parties may avoid an ex parte appearance before a judicial officer by complying precisely with these rules. While declarations containing the language indicated below will enable the clerk to issue these particular orders, the same declaration may be insufficient evidence at a subsequent opposed hearing to warrant extending the orders. Parties may still need to provide a detailed declaration containing specific factual allegations before the opposed hearing. Requests for any orders on the temporary order form which are not listed below must be presented to a judicial officer. The orders which the Business Office may issue are:

#### **A. Property Restraint**

The orders listed in section 5 of the temporary order form are already contained in the Family Law Summons and take effect for the Petitioner upon the filing of the Petition, and for the Respondent upon service of summons. Nevertheless, the clerk may issue a mutual order listed in section 5 of the temporary order form without a declaration.

#### **B. Property Control**

The clerk may issue an order listed in section 6a of the temporary order form only if the order is limited to a specific motor vehicle. The declaration must state "(Petitioner/Respondent) has regularly been the primary driver of the (year/make). The other party has regularly been the driver of another, currently-operating motor vehicle, namely the (year/make). The other party has possession of the keys to that vehicle."

#### **C. Minor Children**

The order listed in section 7a(1) of the temporary order form restraining a party from removing any minor children of the parties from the State of California is already contained in the Family Law Summons. The clerk may issue an order listed in section 7a(1) of the temporary order form without a declaration.

### **RULE 5.36 CONTINUANCES**

Only the court may issue the TRO or continue the hearing on a domestic violence restraining order. TRO's will not remain in effect during the continuance, absent a stipulation or court order. The moving party must obtain a "half slip" from the court and provide it to the Sheriff's Office.

## **CHAPTER 5 ORDERS TO SHOW CAUSE/ LAW & MOTION RULES**

### **RULE 5.37 TIME FOR SERVICE AND FILING OF PAPERS**

Absent an order shortening time, all moving, opposing, and reply papers, as well as orders to show cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b). If an FCS appointment has been set, all moving papers shall be served at least 10 calendar days prior to the FCS date. Conformed copies of all papers shall also be provided to the opposing party or their counsel prior to the hearing.

Supplemental declarations serve a valid purpose in Family Law matters, particularly where relevant evidence has been obtained through discovery subsequent to the filing of the original moving papers. In recognition of this fact, supplemental declarations, if any, shall be filed and personally served by either party up to 5 court days before the hearing. Responses to supplemental declarations shall be filed and personally served before 10:00 a.m., 2 court days before the hearing. If the supplemental declarations or responses are served by mail, the required time for service is increased by 5 calendar days. No reply declarations are permitted except as set forth below.

If a party personally serves supplemental declarations at least 10 court days before the hearing, then responses to the supplemental declarations must be filed and personally served at least 5 court days before the hearing. Replies to responding declarations must be filed and personally served by 10:00 a.m., 2 court days before the hearing.

The Court may decline to consider any supplemental declarations which are not timely served or do not appear to be the result of newly discovered evidence or facts which were not available

when the original pleadings were filed, or where the supplemental pleadings were filed late to gain a tactical advantage.

In cases where a temporary restraining order or a protective order has been issued under either Family Code sections 240, 2040 (children, property and insurance), 4620 (disposable property), 6320 (Domestic Violence Prevention Act), or 7710 (Uniform Parentage Act), filing and service of the moving and supporting papers must be in compliance with Family Code sections 242 and 243.

### **RULE 5.38 FORM OF PAPERS PRESENTED FOR FILING**

All papers presented for filing shall comply with the California Rules of Court, Rule 201. After the initial filing, all pleadings shall bear the case number and the name of the judicial officer to whom the case has been assigned. The date, time and department where the matter is to be heard shall also be designated on the first page underneath the case number and nature of the paper.

Memoranda of points and authorities shall comply with the California Rules of Court, Rule 313, and shall be separate from declarations. Declarations shall not contain points and authorities.

Exhibits filed or lodged by Petitioner/Plaintiff shall be numbered consecutively for each hearing beginning with Number 1. Exhibits filed or lodged by Respondent/Defendant shall be lettered consecutively for each hearing beginning with Letter A.

Machine-produced copies of any Judicial Council forms may be submitted as originals provided they are identical in clarity and quality. Forms not meeting California Rules of Court, Rule 201.1 may be rejected. Current adopted Judicial Council forms shall be used where appropriate.

### **RULE 5.39 EXHIBITS – LODGMENTS AND HIGHLIGHTING**

Exhibits accompanying a Motion or Order to Show Cause which exceed 10 pages shall be lodged rather than filed with the Court. The provisions of the California Rules of Court, Rules 316 and 319, apply. The evidentiary foundation for the exhibits shall be set forth in the appropriate declarations filed with the Court. A notice of lodgment listing the documents must be filed and served on all parties, and a copy must be submitted with lodged material. Documents lodged with the Court shall be tabbed or paginated to correlate to the notice of lodgment. Each document, particularly deposition testimony, shall be marked in a manner that calls attention to the relevant portion(s) of the document or testimony.

Lodged documents will be stamped "received" by the Court. Following the return of the lodged documents by the Court, the party lodging them shall retain them until the applicable appeal period has expired. Due to limitations of storage space, counsel shall not lodge exhibits more than five court days prior to hearing, except by court order.

The clerk is authorized to refuse to accept lodged documents if a self-addressed envelope with sufficient postage for mailing or an attorney service pick-up slip is not submitted with them. If the clerk is persuaded to accept the documents despite non-compliance with the above, the risk of loss is on the party or their counsel and it is solely the responsibility of the party or their counsel to arrange for retrieval of the material at counsel's expense within 5 court days of the date of the hearing. Papers not retrieved within 5 court days may be discarded without further notice.

### **RULE 5.40 FEE WAIVERS**

Applications and orders for waivers of court costs and fees shall be in the current form prescribed by the Judicial Council.

#### **RULE 5.41 FAMILY COURT SERVICES INITIAL SCREENING FORM**

When filing an Order to Show Cause regarding custody or visitation, whether disputed or not, the moving party must also file a Family Court Services Initial Screening Form (SDSC FCS-46).

#### **RULE 5.42 INCOME AND EXPENSE DECLARATIONS**

A current Income and Expense Declaration, with verification of income pursuant to Rule 5.50, shall be filed and served with the moving papers for any hearing involving financial issues, such as support, attorney's fees and costs. (See Chapter 6 for details.) Failure to comply with this rule may subject the party and/or their attorney to sanctions pursuant to Code of Civil Procedure section 575.2.

#### **RULE 5.43 PLEADINGS NOT TIMELY SERVED**

If a party objects to a pleading as not being timely served, the Court may, in its discretion, refuse to consider the pleading or, for good cause shown, continue the hearing. The Court may, in its discretion, consider an Income and Expense Declaration not served in conformity with these rules.

#### **RULE 5.44 COMPANION MATTERS**

A companion matter is a matter which addresses only those issues reasonably related to the issues raised by the calendared OSC or motion. A companion matter need not be served and filed as set forth in Rule 5.37. An order shortening time for hearing is not required to join a companion matter with another currently calendared matter. The companion matter shall be filed and personally served by 10:00 a.m., 5 court days before the original hearing. A response to a companion matter shall be filed and personally served by 10:00 a.m., 2 court days before the hearing. No written replies are permitted.

Requests for attorneys' fees and standard restraining orders may be addressed in the responsive declaration without filing a companion matter. The same is true for affirmative relief regarding modification of support, custody or visitation when the moving papers seek modification of support, custody or visitation.

Absent prior court order, an Order to Show Cause re Contempt shall not be filed as a companion matter and must be heard on a date before any other pending motions involving the same or similar subject matter. However, a request to determine arrears and/or for attorneys' fees and costs may be filed as a companion matter to an Order to Show Cause re Contempt for Failure to Pay Support.

#### **RULE 5.45 REISSUING ORDERS TO SHOW CAUSE**

Except as provided to the contrary in Family Code section 3062, orders to show cause not timely served may be "reissued" by the clerk, provided the original matter was filed less than 30 days before re-issuance is requested and the applicant files a completed form "Application and Order for Reissuance of Order To Show Cause"(SDSC FL-306). A reissuance filed more than 30 days after the original filing requires a judicial officer's signature.

#### **RULE 5.46 POST JUDGMENT SERVICE OF PROCESS**

Post judgment motions shall be served pursuant to Family Code section 215. Service of post judgment motions on the responding party's attorney is insufficient.

#### **RULE 5.47 HEARINGS ON ORDERS TO SHOW CAUSE AND NOTICED MOTIONS**

~~A. Calendaring. The hearing dates for Order to Show Cause (OSC) matters and noticed motions are not available from the business office by telephone. However, the business office will advise as to the approximate setting dates. Preferred dates for hearings may be indicated to the business office on the~~

~~messenger slip or by other writing addressed to the clerk. The writing should be attached to the accompanying pleadings. When temporary restraining orders (TRO's) are granted pending a hearing, the business office must calendar the hearing within 25 calendar days of the date of the order. Hearing dates for OSC's and noticed motions without TRO's will be set in the future to allow for proper notice. If no TRO's are requested and mediation at Family Court Services (FCS) is needed, the hearing should be set at least 10 court days after the FCS appointment. If TRO's are granted and mediation at FCS is needed, the hearing date must still be scheduled within 25 calendar days of the date of the order. However, the custody and visitation aspects of the hearing will normally be continued if an FCS appointment is not available at least 10 court days before the hearing.~~

**B. Morning and Afternoon Calendars.** At the Central Division, OSC's and noticed motions are generally heard Monday, Tuesday and Wednesday mornings and Monday and Tuesday afternoons. The morning calendar is limited to short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument). All contempt matters, longer OSC's and noticed motions (those with time estimates of more than 20 minutes but less than 40 minutes) are generally set on the afternoon calendar. When counsel is aware that a matter will take more than 20 minutes but less than 40 minutes, counsel shall request an afternoon setting. Matters which require more than 40 minutes shall be specially set by the Court

In North County, short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument) are generally heard Monday, Tuesday and Wednesday, mornings and afternoons. Long cause matters (those which take more than 20 minutes but less than 3 hours of court time including time for the Court to review the file and time for argument) are generally heard on Thursday and Friday, mornings and afternoons. Domestic violence and contempt matters are heard on Wednesday afternoon.

In East County, short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument), including contempt matters, are generally heard on Tuesday and Thursday, mornings and afternoons. Long cause matters (those which require more than 20 minutes of court time) are specially set by the Court.

In South County, short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument), including contempt matters, are generally heard Monday through Thursday mornings and Monday through Wednesday afternoons. Long cause matters (those which take more than 20 minutes of court time) are generally heard on Thursday afternoons.

The above schedules may be modified at the Court's discretion.

**C. Continuances.** Stipulated continuances of a noticed motion or an OSC (except contempt and domestic violence matters) shall be routinely granted by telephone or in open court. The stipulated continuance may be made to any available court date and time. Therequest may be made by either counsel.

No more than three continuances shall be granted without court order and for good cause shown. If a case is not ready to proceed to hearing on the date established as a result of the third continuance, the Court shall, absent good cause shown, take the matter off calendar. Upon a matter being taken off calendar as provided above, the Court may reserve jurisdiction to reset the matter for hearing upon ex parte application by the moving party. The Court may also

reserve jurisdiction to issue the requested relief retroactive to the date the initial motion was filed upon a showing of good cause. At the time of the ex parte application, the moving party shall submit suggested dates to the Court on which the matter will be ready to proceed to hearing. Once reset, and except for emergencies, a hearing will only be continued for good cause shown by ex parte order obtained before the date of the reset hearing.

Continuances of OSC's re contempt must be requested in open court, with the citee present, or obtained by written stipulation including a signed consent by the citee to the continuance and a waiver of time to hear the contempt. The stipulation shall be filed with the Court at or before the time set for the original hearing. If the citee does not appear, upon request, a bench warrant will normally be issued and held until the new date to retain jurisdiction.

Stipulated telephone continuances shall be directed to the Family Law calendar clerk for the department until 3:30 p.m. the Court day before the scheduled hearing. On the day of the hearing, stipulated continuances may be obtained from the Court clerk in the department before the calendar call. The Court may also grant stipulated continuances at the time of the calendar call.

If custody or visitation is at issue and the Family Court Services or private mediator's report is not available at least 10 court days before the hearing, the Court will normally grant a continuance upon request of a party who has been prejudiced by the inability to review the report sufficiently in advance of the hearing.

**D. Calendar Calls.** Generally, the morning calendar is called at 9:00 a.m. and the afternoon calendar is called at 1:45 p.m. These times may be changed by the supervising judge, and notice thereof will be published in the legal newspapers in the county and posted in the affected courthouses.

The Court will attempt to accommodate counsels' calendar conflicts upon reasonable request. Requests for calendar priority should be made at the calendar call.

All matters unanswered by 10:00 a.m. on the morning calendar or 3:00 p.m. on the afternoon calendar may be taken off calendar unless counsel have previously informed the Court of the reason that they will not be present at the calendar call, and, if engaged elsewhere, of where they are actually appearing. Counsel unable to appear at the calendar call shall give notice of that fact to opposing counsel at the earliest reasonable time.

At the time the calendar is called, it is the duty of counsel to give the Court accurate time estimates for the presentation of the entire matter. Failure to do so may result in the hearing being interrupted, continued or ultimately concluded at the end of the calendar. Counsel should meet and confer before presentation of the case to determine which issues are settled, which issues are to be presented to the Court as contested and the total time estimate for their presentation.

**E. Manner of Presentation.** Counsel shall present OSC's and motions in the following order:

1. Announce appearance;
2. Clearly state ALL contested issues;

3. Recite any stipulated matters for the approval of opposing counsel, the parties and the Court; and.

4. Briefly present argument on each contested issue including a recommended resolution. Counsel shall not interrupt the opposing side's presentation, other than with valid evidentiary objections and shall direct all remarks to the Court. Once the Court has rendered its decision, counsel shall not attempt to reargue the case. It is, however, acceptable to inquire of the Court in order to clarify a ruling or correct a mistake.

**F. Chambers Conferences.** Chambers conferences may be held at the discretion of the judicial officer in each department. The purpose of a chambers conference is solely to discuss matters with the Court which should not be set forth on the record in open court. These conferences will usually not be held until after the conclusion of other matters ready to be heard in open court. Chambers conferences shall not be used to rehearse OSC and motion presentations.

**G. Stipulation Forms.** Long and short stipulation forms are available in all Family Law departments. The Court encourages the use of these forms in lieu of oral stipulations. After the form is completed, counsel should give the form to the clerk for immediate filing and distribution. Use of the stipulation forms will eliminate the need for the filing of a subsequent order. If counsel desires, however, a typed formal order may be prepared and filed after filing the stipulation form.

**H. Limitations on Evidence/Oral Testimony.** It is the policy of this court to consider only the papers filed with the Court when granting or denying applications for orders. Factual arguments shall be limited to evidence, and/or reasonable inferences drawn therefrom, which is contained in declarations filed with the Court and signed under penalty of perjury. Except for contempt citations, oral testimony will generally not be received. In contempt hearings, the charging declaration, subject to evidentiary objections, may be received in evidence, provided the declarant is present in court and available for cross-examination. Other than an OSC re contempt, if any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written notice of the intent to present oral testimony shall be served on the opposing party at least 5 court days before the scheduled hearing. The notice shall state the name of the intended witnesses and the subject matter of the witnesses' testimony.

The written declarations shall be the direct testimony of the declarant. Oral testimony shall be limited to hostile third party witnesses or cross-examination on the contents of the written declarations and/or reasonable inferences drawn therefrom. Oral testimony may also include re-direct and rebuttal, if necessary. If the intended oral testimony will be cross-examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court-appointed expert witness, the party who wishes to conduct the cross-examination shall set forth in a written declaration the reasons for requesting cross-examination, and that declaration shall accompany the notice of intent to present oral testimony.

Failure to give the required notice will generally result in a denial of the request for oral testimony. Even if such notice is given, the taking of oral testimony shall be left solely to the discretion of the Court.

**I. Awards of Attorneys' Fees and Costs.** If liquid community assets exist, an award of attorneys' fees and costs will generally be made from this source. If no liquid community assets exist, the Court will generally award attorneys' fees plus costs to a party who is unable to bear the party's fees and costs. The Court will require the repayment of a retainer where the party awarded attorneys' fees was compelled to borrow money to pay the retainer, and the community or the paying party has the ability to repay the loan. If attorneys' fees and costs are awarded on a monthly installment basis, the standard acceleration provisions upon default shall apply such that if any two payments are missed, the entire balance will immediately accelerate and become all due and payable.

When awarding attorneys' fees in support enforcement actions, including contempt matters, the Court will be governed by Family Code section 3557.

**J. Calendar Management.** Some Family Law motions and orders to show cause involve



unusually complex issues of law and fact. This rule is intended to ensure that the Court has adequate time to review lengthy papers and/or consider complex issues or factual situations before a scheduled hearing and to allow hearings to proceed without undue delay. In all cases, the Court reads all relevant pleadings before rendering its decision either by reading them prior to hearing, at the time of hearing, or by taking the matter under submission. In the interest of expediting hearings on complex issues of fact or law, counsel may request that the Court “pre-read” specific documents in the Court file by notifying the department’s calendar clerk and all parties no later than 12:00 p.m. 1 court day before the hearing. The pre-read request shall identify all relevant documents filed by both sides. If the pre-read request identifies more than 8 documents, counsel shall make arrangements with the calendar clerk for counsel or counsel’s representative to place yellow tags on the documents to be read. The Court will also accept lodged copies of the identified documents in lieu of tagging the documents. If opposing counsel objects to the request for the pre-read, opposing counsel shall notify the calendar clerk for the department of the specific objection. However, this will not prevent the pre-read unless the objection clearly demonstrates the prejudice which will result from the requested pre-read.

**K. Extra Copies of Pleadings.** Counsel shall bring an extra set of all relevant pleadings to the hearing. Due to last-minute filings and the volume of business, it is not uncommon for the Court file to be incomplete.

## **CHAPTER 6**

### **DECLARATIONS OF DISCLOSURE, INCOME AND EXPENSE DECLARATIONS AND TAX RETURNS**

#### **RULE 5.48 DECLARATIONS OF DISCLOSURE**

All preliminary Declarations of Disclosure (“DOD”) shall be prepared and served in compliance with Family Code sections 2103 and 2104.

All final DOD's shall be prepared and served in compliance with Family Code section 2105 unless waived in compliance with Family Code section 2105, subdivision (d) or Family Code section 2110.

Pursuant to Family Code section 2106, except as provided in subdivision (d) of Family Code section 2105 or in Family Code section 2110, absent good cause, no judgment with respect to the parties’ property rights shall be entered without each party executing and serving their final DOD and filing a Proof of Service of the DOD. “Good cause” can only be established by a declaration, signed under penalty of perjury, stating sufficient supporting facts.

#### **RULE 5.49 INCOME AND EXPENSE DECLARATIONS**

A current Income and Expense Declaration, and verification of income pursuant to Rule 5.50, shall be filed with the moving papers for any hearing involving financial issues, such as support, attorney’s fees and costs. An Income and Expense Declaration is current if it is executed within 90 days of the hearing. Supplemental, updated or responsive Income and Expense Declarations shall be served at least 5 court days before the hearing.

The Income and Expense Declaration shall be printed on green paper and all portions of the form shall be completed. The gross income of a co-habitee or new spouse shall be set forth as provided on the Income and Expense Declaration and all cash, funds on deposit, stocks, bonds and other easily sold assets shall be fully disclosed.

When attorney’s fees or costs are requested the Court requires that actual amounts be entered on the lines “Cash and checking accounts, savings, credit union, money market, and other

deposit accounts", "stocks, bonds and other assets you can easily sell" and "All other property real or personal (estimate fair market value minus the loans and debts you owe)". The attorney's fees paid to date must be completed and must include all monies held in trust by the attorney for fees and costs. The fees owed to date provision shall not include fees that have been paid. Insertion of the word "unknown" does not constitute compliance with this rule.

#### **RULE 5.50 ATTACHMENTS TO INCOME AND EXPENSE DECLARATION**

To verify current income, parties must serve copies of the following documents with their Income and Expense Declaration. Documents that are required by this rule to be served with the Income and Expense Declaration shall be lodged with the Court at the time of the hearing.

**For Salaried Employees:** The prior calendar year's W-2 and the last 2 months pay stubs showing all forms of year-to-date earned income.

**For self-employed individuals, including independent contractors:** A schedule reflecting all compensation received by that party year-to-date; the last filed IRS 1040 Schedule C or C-EZ; the prior calendar year's and the most recent profit-and-loss statement or other documents which reflect the prior year, year-to-date and prior month's income.

**For employees who are shareholders in a closely-held corporation:** The prior calendar year's W-2; the three most recent pay stubs; the prior year's IRS K-1; the last filed IRS Schedule E (Part II); the prior year's and the most recent profit-and-loss statement or other documents which reflect the prior year, year-to-date and prior month's income.

**For partnership income:** A schedule reflecting all compensation received by that party year-to-date, the prior year's IRS K-1; and last filed IRS Schedule E (Part II); the prior calendar year's and the most recent profit-and-loss statement or other documents which reflect the prior year, year-to-date income and prior month's income.

**For rental income:** The last filed IRS Schedule E (Part I); copies of statements, summaries or other documents reflecting all rental receipts, deposits, disbursements and expenses for the prior calendar year, for all periods year-to-date and for the last month.

**For dividend income, interest income or other unearned income:** The prior calendar year's IRS 1099's; the last filed IRS Schedule B; a copy of all documentation evidencing all funds on deposit, shares of stock, bonds, or other income-producing assets owned by that party, and the rate of return currently being paid thereon; and, any income derived therefrom during the prior calendar year, year-to-date and in the prior month.

#### **RULE 5.51 DISCLOSURE OF INCOME TAX RETURNS**

When child, family or spousal support is requested, a party may require the opposing party to provide income tax returns pursuant to Family Code section 3552. A request for tax returns must be made no later than 10:00 a.m., 5 court days before the hearing. The tax returns including all Schedules, W-2's, 1099's and K-1's must be provided to opposing counsel on the earlier of 5 court days after the request or 10:00 a.m. 2 court days before the hearing.

Tax returns served pursuant to this rule must not be filed with the Court except as provided in Family Code section 3552.

#### **RULE 5.52 PRIVILEGES RETAINED**

The above rules concerning attachments to Income and Expense Declarations and production of income tax documents are subject to any and all privileges held by a party or any third party whose privilege for non-disclosure would be violated by a party complying with these rules.

## **CHAPTER 7 SHORT CAUSE TRIALS**

### **RULE 5.53 SHORT CAUSE TRIALS**

**A. Time Limit** Short cause trials may not exceed 3 hours including time for the judge to review the file, read the trial briefs, conduct chambers conferences and issue a ruling. Cases that exceed the 3 hour time limit may result in a mistrial and be set for a Case Management Conference at which time the matter will be set for a long cause trial.

**B. Calendaring** Generally short cause trials are heard Fridays in the Central Division; Friday mornings in South County; Mondays in East County; and Thursdays and Fridays in North County. See Chapter 9, Rules 5.55 and 5.58 for additional rules governing short cause trials in the FSD Division.

No more than 3 continuances shall be granted without court order and for good cause shown. If a case is not ready to proceed on the trial date and a third continuance has already been granted, absent good cause shown, the Court shall take the matter off calendar. When taking a matter off calendar in these circumstances, the Court shall reserve jurisdiction to reset the matter for trial upon ex parte application.

**C. Temporary Judges** Occasionally, temporary judges will be available to hear short cause cases when the assigned judicial officer is absent. These temporary judges will be experienced Family Law attorneys who have been approved by the Supervising Judge of the Family Law Court. If a case is assigned to a temporary judge, the parties will be asked by the clerk in the assigned trial department to sign a stipulation consenting to that temporary judge. If consent to a temporary judge is not obtained, the case shall be referred to the Supervising Judge of the Family Law Court for assignment that day to an available judicial officer or continuance to a convenient date on the originally assigned judicial officer's calendar.

**D. Custody and/or Visitation Issues** If custody or visitation is in issue at the time of trial, the parties shall meet with Family Court Services before trial. This meeting shall be scheduled sufficiently in advance of trial to allow time for the counselor to prepare and file a recommendation at least 10 calendar days before the scheduled trial date.

**E. Mandatory Short Cause Trial Statements** Counsel shall prepare a short cause trial statement and, if financial matters are at issue, a current Income and Expense Declaration. Copies of these documents must be personally served on opposing counsel no later than 2:00 p.m., 2 court days before trial. The originals of the trial statement and a current Income and Expense Declaration shall be filed with the clerk in the trial department by 3:00 p.m., 2 court days before trial. Every short cause trial statement shall be in the form of **Appendix E**. No other format will be accepted for filing. Failure to timely serve and file the trial statement and current Income and Expense Declaration may subject the non-complying counsel to sanctions. This rule shall not apply to "long" OSC's heard on the short cause trial calendar.

**F. Legal Points and Authorities** When a case involves complex or novel points of law, a party may file a trial brief which includes legal points and authorities along with the mandatory trial statement.

## **CHAPTER 8 LONG CAUSE TRIALS**

### **RULE 5.54 LONG CAUSE TRIALS**

**A. Time Limit**

A long cause trial is defined as any trial estimated as requiring more than three hours of court time.

### **B. Trial Setting**

If a trial date was not set at the final Case Management Conference, and the case does not settle at the Mandatory Settlement Conference, the case will be referred to the assigned judge to set a trial date based on counsel's time estimate. Inaccurate time estimates may result in a mistrial and sanctions. Where necessitated by the Court's calendar, the assigned judge may make arrangements with the Supervising Judge of the Family Law Court to assign the case to another department for trial. If the Court is unable to hear the case on the trial date, it will trail the case and notify the parties as soon as possible when their matter can be heard.

### **C. Continuances**

Trials may only be continued by the trial judge.

### **D. Trial Preparation**

The rules governing trial preparation are set forth in **Appendix G**.

### **E. Trial Statements and Trial Briefs**

Trial statements as set forth in **Appendix E** are required. If a case involves complex or novel facts or points of law, a trial brief including legal points and authorities may be submitted. Trial statements and trial briefs shall be exchanged as set forth in **Appendix G**.

## **CHAPTER 9 FAMILY SUPPORT DIVISION MATTERS**

### **RULE 5.55 CALENDARING**

Except as otherwise provided by law, all matters involving the Department of Child Support Services shall be set and heard on the Family Support Division (FSD) Calendar. All Domestic matters involving parentage determinations or support issues where the Department of Child Support Services is involved, filed with the County of San Diego, shall be heard on a Family Support Calendar unless the Department of Child Support Services has provided a written waiver. Written notice to the Department of Child Support Services is required in any proceeding where there has been previous Department of Child Support Services involvement or one or both of the parties are currently receiving, have received, or intend to apply for any form of public assistance unless not required per Family Code section 17404(e)(4). Such notice shall be in accordance with Code of Civil Procedure section 1005(a) and served on the Department of Child Support Services at 220 West Broadway, Room 5003, San Diego, California 92101.

The Family Support Division Calendar is called at 9:00 a.m. and 1:45 p.m. Monday through Thursday - Special settings and short cause trials in the Downtown location are scheduled each Friday at 9:00 a.m. and 1:45p.m.

### **RULE 5.56 ORDERS**

**A.** All orders involving the Department of Child Support Services shall include the following provisions:

1. All payments shall be made by wage assignment payable to the Department of Child Support Services.
2. The payor shall make all payments directly to the Office of the Department of Child Support Services unless payments are fully collected by wage assignment;
3. The payor must provide the Department of Child Support Services with their date of birth, social security number, income, employer's name, employer's address and residential address;
4. The payor must notify the Department of Child Support Services in writing within 48 hours of

any change of address, income or employment;

**5.** The payor shall provide health insurance for the child in the action, if available at no or reasonable cost through their employment; and

**6.** The payor shall provide documentation showing proof of health insurance coverage to the Department of Child Support Services within 48 hours.

**B.** All stipulations reached in matters involving the Department of Child Support Services must be reviewed and signed by a Department of Child Support Services attorney before being submitted to the Court. If the Department of Child Support Services does not sign the stipulation, one of the parties may place the issue before the Court on an ex parte basis.

#### **RULE 5.57 CUSTODY/VISITATION MATTERS**

The parties may use the Department of Child Support Services' case number to litigate issues of custody and visitation provided there is a judgment granted in the case. Matters involving issues of custody/visitation are to be filed and heard in the Courts of proper venue, i.e. case numbers beginning with:

Case Designation:                      To be heard at:

<b>D</b> - Central Division -	1555 Sixth Avenue, San Diego, CA 92101
<b>DN</b> - North County -	325 South Melrose, Vista, CA 92081
<b>DE</b> - East County -	250 East Main Street, El Cajon, CA 92020
<b>DS</b> - South County -	500 Third Avenue, Chula Vista, CA 91910

**DF** - Appropriate division depending on the residences of the children and parties. When an order to show cause involving custody or visitation is filed in a case involving the Department of Child Support Services, the filing clerk in the appropriate venue is to provide hearing dates as follows:

1. Hearing Date for Family Court Services.
2. Court hearing date for the issues of custody/visitation.
3. Family Support Department hearing date. OSC's and motions involving custody or visitation must be served on all appropriate parties in accordance with Code of Civil Procedure section 1005, subdivision (b).

#### **RULE 5.58 CONDUCT OF HEARINGS AND TRIALS**

**A.** Trials and hearings on the FSD calendar are governed by the rules and readiness procedures as set forth below.

**B.** These rules shall apply only in the Family Support Division. For any trial/hearing set on the short cause calendar in FSD, all parties shall comply with the following.

**C.** The Monday before the hearing date counsel/parties are ordered to meet and confer either in person or by telephone. Upon completion of the meet and confer, the Department of Child Support Services shall provide a status report to the Court as to the following issues:

1. Issues resolved by stipulation;
2. Contested issues;
3. Time estimate;
4. Pre-read requests due by 2:00 p.m. on Wednesday before the hearing date.

**D.** By 2:00 p.m. on the Wednesday before trial, counsel/parties shall file in the trial department

and exchange all documentation including but not limited to the following:

1. Any and all pleadings including but not limited to trial statements and trial briefs, which shall include a list of issues, whether contested or uncontested;
2. Where support or fees are at issue, current Income and Expense Declarations including all required attachments pursuant to the local rule of court;
3. A list of proposed exhibits and copies of actual exhibits which are to be pre-marked prior to the trial date; and
4. A list designating non-party witnesses including the witness' name and the subject matter of each witness' testimony.

**E.** A mandatory trial statement for an FSD matter shall include all relevant items listed in **Appendix E.**

ANY WITNESSES NOT DISCLOSED PURSUANT TO THESE RULES SHALL NOT BE PERMITTED TO TESTIFY AT TRIAL. ANY EXHIBITS NOT EXCHANGED PURSUANT TO THESE RULES SHALL NOT BE INTRODUCED AT TRIAL. THE ONLY EXCEPTIONS ARE TRUE IMPEACHMENT OR REBUTTAL WITNESSES OR EXHIBITS.

**F.** Should counsel/parties reach a full stipulation at any time prior to the trial date, the Department of Child Support Services shall inform the Court immediately.

#### **RULE 5.59 TIME FOR EX PARTE MATTERS**

Ex Parte matters shall be heard Monday through Friday from 8:30 a.m. to 8:55 a.m. and 1:30p.m. to 1:45p.m. All other requirements as set forth in Chapter 3 as to notice, meet and confer, and the preparation of an ex parte application form and proposed order apply.

### **CHAPTER 10 FAMILY COURT SERVICES.**

It is recommended that prior to filing an OSC/motion to address disputed issues of child custody or visitation that the parties enroll in a parent education class or participate in family therapy to gain an understanding of the negative impact conflict has on children.

#### **RULE 5.60 MEDIATION REQUIRED**

Before a hearing on any disputed issue of custody or visitation, the parties shall participate in mediation either with a mediator at Family Court Services (FCS) of the Superior Court or a private mediator retained by the parties. However, the Court may make emergency temporary custody and/or visitation orders pending the hearing. Unless otherwise stipulated by the parties or ordered by the Court, FCS mediation and private mediation in San Diego County is understood to be a non-confidential process which means that the information provided to the mediator is not confidential and if the parties do not reach an agreement through mediation, the mediator shall submit a recommendation to the Court with reasons for the recommendation. Upon a showing of good cause, the Court may order that the parties and their minor children undergo a psychological evaluation or custody evaluation to assist in addressing any disputed issue of custody or visitation.

#### **RULE 5.61 PRIVATE MEDIATION**

The parties may stipulate to use a private mediator or the Court may order the use of a private mediator. Rule 5.62, and 5.63 E, F, G, H, I, J and K shall apply to the use of and recommendations of a private mediator. If the parties elect to participate in confidential private mediation and are unable to reach an agreement, the parties must participate in a non-confidential private mediation or schedule and participate in a meeting with a FCS mediator before the matter is heard by the Court. The mediator shall then prepare and submit a

recommendation with reasons for the recommendation to the Court before the custody hearing.

#### **RULE 5.62 MEDIATION AT FAMILY COURT SERVICES (FCS)**

Except in cases where the parties stipulate or the Court orders private mediation, all disputed custody or visitation matters shall be mediated at FCS.

**A. Agreements Reached in Mediation.** If the parties reach an agreement during mediation, the mediator will prepare a written agreement and it will be submitted to the parties and their attorneys before the custody hearing. If the parties and attorneys approve the agreement, they will submit the agreement to the Court for the Court's approval and adoption as an order.

**B. Unresolved Issues in Mediation.** If the parties are unable to resolve issues of custody or visitation through mediation, the FCS mediator will submit a written recommendation with reasons for the recommendation to the parties and their attorneys and the Court before the custody hearing. The Court will consider the recommendation at the time of the hearing. If the FCS or private mediator report is not available at least 10 court days before the hearing, the Court will normally grant a continuance upon request of a party who has been prejudiced by the inability to review the report sufficiently in advance of the hearing. Counsel has the right to cross-examine the mediator during the hearing.

**C. Location of Family Court Services.** The locations and telephone numbers of Family Court Services are contained in **Appendix A**.

#### **D. Initiating Family Court Service Mediation.**

**1. Custody/Visitation Hearing Pending.** If a custody/visitation hearing is pending, the moving party must file a completed FCS Initial Screening form with the moving papers. The business office shall assign both a hearing date and an FCS appointment and insert both dates on the custody/visitation papers. Both parties are required to attend and participate in the FCS appointment. If the moving papers contain no FCS appointment and the responding party determines that a custody or visitation dispute exists, the responding party shall schedule the earliest possible FCS mediation appointment and promptly notify the moving party of the time, date and place.

**2. No Custody/Visitation Hearing Pending (self-initiated mediation).** If there is no custody/visitation hearing pending, a party may request an FCS appointment to address disputed issues of child custody or visitation by contacting FCS directly. The party scheduling the appointment is responsible for notifying the other party of the date, time and place of the appointment. This is a voluntary process and participation is not mandatory.

**E. Unanticipated Issues Arising at Hearing.** If unanticipated child custody or visitation issues are raised for the first time at a hearing, the Court may make a temporary custody/visitation order and may order the parties to participate in FCS mediation. However, the parties must meet with a FCS mediator before the Court will make final orders regarding a disputed custody/visitation issue.

#### **F. Resolution of Dispute Before Mediation; Cancellation or Rescheduling of Appointment; Sanctions.**

**1. Cancellation.** Parties and their attorneys are encouraged to try to resolve child custody/visitation disputes with the opposing party/attorney before the mediation appointment and the Court hearing. If the disputed custody/visitation issue is resolved prior to the Family Court Service mediation appointment, the party/attorney who scheduled the mediation shall promptly notify the opposing party/attorney and call FCS to cancel the appointment.

**2. Rescheduling of Mediation.** Parties may reschedule, by stipulation, the FCS mediation appointment no later than 1 week prior to the appointment date. Other requests to reschedule a mediation appointment require court approval. The requesting party shall notify FCS of the scheduling change.

**3. Sanctions.** Failure to cancel or failure to attend and participate in an FCS appointment may subject the party to monetary sanctions of up to \$1,500.

**G. Submitting Mediation Data Sheet, Writings and Other Materials.**

**1. The Mediation Data Sheet.** At or before the scheduled mediation session, each party shall submit a completed Family Court Services Mediation Data Sheet to the office where the mediation is scheduled. No attachments shall be permitted to the Mediation Data Sheet. Blank Mediation Data Sheets may be obtained from either the business office or any FCS office.

**2. Service of Writings and Other Materials.** Prior to the mediation conference, the parties, or their attorneys, may provide FCS with writings and other materials including declarations, letters or other documents. Absent court order to the contrary, FCS will not accept these writings and other materials unless they have been served on the opposing party or their attorney and a Proof of Service is attached. The following constitutes proper service: if personally served, at least 10 calendar days before the mediation conference; or if served by mail, 15 calendar days if mailed within the State of California, 20 calendar days if mailed outside California but within the Continental United States, or 30 calendar days if mailed outside the Continental United States.

**H. Consultation Between Attorneys and Mediator.** If both parties are represented by attorneys and the attorneys want to confer with the mediator prior to or after the mediation conference, they may schedule a time that is mutually agreeable to the attorneys and the mediator. The mediator will not meet with one attorney unless the opposing attorney is available in person or by telephone. The mediator may have ex parte contact with either attorney or party at any time during the mediation and/or recommendation process to obtain necessary information. Neither a party nor an attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by telephone. If, during the course of the mediation, a party by oral communications with the mediator raises issues or allegations which can influence the mediator, the mediator shall give the other party an opportunity to respond before completing his or her report. If one attorney refuses to meet with the mediator, the other attorney may meet individually with the mediator after obtaining an ex parte order.

**I. Telephone Conference.** If an in-person meeting with a mediator at FCS is not feasible, such as when one party resides outside the County of San Diego, a conference will be conducted by telephone. The parties or their counsel shall advise the FCS calendar clerk of the need for telephone mediation and provide appropriate telephone numbers. The Family Court mediator will call the telephone participant collect at the time of the conference. If represented, it is the attorney's responsibility to advise his or her client to accept this collect call. A Mediation Data Sheet shall be submitted by each party even though the meeting is to be conducted by telephone.

**J. Attendance at Initial Meeting.** Other than a statutorily authorized support person, only the parents shall attend the initial mediation conference, unless otherwise requested by the Court or FCS mediator. The parties' attorneys do not participate in the FCS mediation. If the mediator wants to interview the child, new mates or other persons, the mediator will arrange for such interviews after the initial meeting.

**K. Request for Change of Mediator.**

**1. No Peremptory Challenges.** A peremptory challenge of a mediator is not allowed. However, a party may request a change of mediator by following these rules.

**2. Perceived Bias of Mediator.** Should counsel believe that a particular mediator is biased in a way that affects the fair and equal treatment of their client, counsel may bring this matter to the attention of the Director of Family Court Services for consideration of this perception and assignment to a different mediator as the Director may deem appropriate.

**3. Timing of Request for Change of Mediator.**



**a) Prior to Mediation.** A party or counsel wanting to change a mediator before the mediation begins shall send a written request to the Director of FCS and serve a copy on the opposing party or their attorney. The Director of FCS shall review the request and, if warranted, assign the matter to another mediator. If the request is not granted, the Director of FCS shall advise the parties of the decision in writing.

**b) During Mediation.** A party or counsel must request a change of mediator as soon as a sufficient basis for a change is known. No request to change a mediator will be granted unless there is a demonstrable showing of bias or prejudice against one of the parties or their attorney such that an independent, fair and impartial recommendation cannot be made to the Court.

**c) Subsequent Court Proceedings.** If either party files a subsequent court proceeding requiring FCS mediation, either party may, at the time of the assignment, request a different mediator, without a showing of good cause.

**L. Extended Family Court Services Mediation/Investigation.** If the Court orders FCS to perform a custody investigation or extended mediation, the parties shall bear the cost of such services at the prevailing hourly rate. The Court will require one or both parties to pay an initial nonrefundable deposit set by the Court. The Court shall make the order on form SUPCT FCS-6. The parties shall take a copy of the order to FCS when they report for intake. Failure to complete the intake information will delay completion of the evaluation. Rules 5.63E, F, G, H, I, J, K and L shall apply to extended FCS mediation and investigations.

The parties may enter into agreements on any issues to which they agree. As to those issues raised to which the parties are unable to agree, the mediator shall make a recommendation to the Court to include comments on each parents' support for or opposition to the recommendations, the best interests of the child, and other information available to the mediator. The recommendations shall be provided to the parties and the Court in a written report.

#### **RULE 5.63 CUSTODY/PSYCHOLOGICAL EVALUATIONS**

A custody evaluation is a process by which a mental health professional uses appropriate professional techniques to gather information. The mental health professional uses this information to formulate a recommendation that is submitted to the Court. Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare and best interest of the child with regard to disputed custody and visitation issues. California Rules of Court, Rules 5.210 - 5.230, which require local courts to implement this rule, affect both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730 or Code of Civil Procedure section 2032.

The Court may order either a partial evaluation or a full evaluation. A "partial evaluation, investigation or assessment" is an examination of the health, safety, welfare and best interest of the child. It is limited by court order in either time or scope. A partial evaluation may address a single issue, such as: the level of the alleged substance abuse, domestic violence, mental instability/illness of a parent; with whom is the child most closely bonded; which parent is most likely to facilitate a positive and meaningful relationship between the child and the other parent; the child's preference and basis therefore; the effect upon the child in a "move away" situation. Partial evaluations shall include contact with both parents to obtain information regarding the referring issue or question. A "full evaluation, investigation or assessment" is a comprehensive examination of the health, safety, welfare and best interest of the child.

"Evaluation," "investigation" and "assessment" are synonymous terms as used in this rule. All evaluations shall include those requirements set forth in the California Rules of Court, Rule 1257.3(e).

#### **A. Initiating Partial/Full Custody Evaluation.**

1. The Court, on its own motion, may order a partial or full evaluation.
2. The parties, whether unrepresented or through counsel, may stipulate that the issues of custody and visitation shall be referred for an evaluation prior to or in addition to other recommendations made by Family Court Services.
3. A partial or full evaluation may be requested by Family Court Services following mediation/extended mediation. In the event a partial evaluation is requested, FCS may make recommendations as to the referring issue or question.
4. Nothing herein shall be construed to prevent the evaluator from contacting all counsel and/or parties when it appears to the evaluator that new and/or additional information is being provided which causes the evaluator to recommend a different level of evaluation.
5. A formal order shall be jointly drafted by counsel for the parties, or the parties if unrepresented, setting forth the purpose and scope of the evaluation; identifying the referring issues or questions; identifying the evaluator; listing the types of documents, correspondence and other things to be provided to the evaluator by counsel or party, copying all other parties or counsel in accordance with Rule 5.63F; establishing a payment plan for the evaluator's services; setting a commencement date for evaluation and the probable duration thereof; and such other matters as the Court deems appropriate. The Court shall instruct counsel or a party to provide copies of the order to the evaluator, all counsel or parties and the FCS mediator.

**B. Participation in Evaluation.** Only the parents shall participate in the evaluation. The parties' attorneys do not participate in the evaluation. The Court may require the child or other persons relevant to a determination of custody and visitation issues to participate in any of these processes.

**C. Selection of Evaluator; Request for Change of Evaluator.** The parties may stipulate to the selection of an evaluator subject to the evaluator being approved by the Court. Evaluators shall meet the qualifications, training and continuing education requirements of Family Code sections 1815, 1816 and 3111 and California Rules of Court Rule 5.220(g), and shall be required to acknowledge that they are so qualified and trained. All evaluators appointed pursuant to Evidence Code section 730 (Appointment of Expert by Court) under this rule shall be protected under Civil Code section 47 (Privileged Publications or Broadcasts) acting in the proper discharge of their official duty as appointed by this court for communications made and shall be granted immunity from prosecution so long as the evaluator is acting within the judicial proceedings, for the appointment, or in any other official proceedings authorized by the Court or law, to achieve the objects of the litigation and in connection with or in a manner logically related to the litigation and the underlying action.

If the Court appoints an evaluator on its own motion, or upon motion of a party when the parties are unable to agree on an evaluator, a party may request a change of evaluator. Requests for a change of evaluator made within 5 calendar days of receiving written notification of the Court appointed evaluator assigned to the case shall be made without cause. No peremptory challenges of an evaluator are allowed. Requests for a change of evaluator made after this 5 calendar day period will not be granted unless there is a substantial showing that the evaluator is biased or prejudiced against one of the parties or otherwise unable to render a fair and impartial evaluation. The Court shall consider the basis and timeliness of the request upon an ex parte application.

Evaluators shall be allowed to petition the Court to withdraw from a case, for good cause, in a writing directed to the judicial officer to whom the case has been assigned with copies to counsel or parties. If requested by counsel or either party, a hearing shall be scheduled within 15 days of the mailing of the request, or as deemed necessary by the judicial officer. The evaluator need not be present at the hearing, unless directed by the Court. Any complaints regarding the evaluator's performance shall be directed to the appropriate licensing/regulatory board.

**D. Request for Information from Evaluator.** Before a non-county employee is appointed as an evaluator, upon request, that person shall provide the parties or their attorneys with the following information:

1. A curriculum vitae; and
2. The names of at least 3 attorneys who have worked with them in connection with previous evaluations or 3 mental health professionals who are familiar with their work.

**E. Payment of Costs.** When a private mediation or evaluation is ordered by the Court, the issues of custody and/or visitation will be set for hearing after the anticipated completion of the mediation or evaluation. Generally, the Court will initially order either or both parties to advance the mediation or evaluation costs and reserve jurisdiction to reallocate the costs at the subsequent hearing. If the Court reallocates the costs, it shall use Family Code sections 270 through 272 as guidelines, rather than Family Code Section 2030 and 2032.

**F. Exchange of Information.** If either party or their attorney wishes to submit any form of information to an evaluator or mediator for consideration during private mediation or evaluation, he or she shall submit the information to the evaluator or mediator with a cover letter describing or itemizing the materials provided. The cover letter shall clearly state that the information has also been sent to the opposing counsel and/or the unrepresented litigant using the same method of delivery as was used for the mediator (i.e. mail/hand delivery/fax, etc). The mediator or evaluator shall not review the enclosed information unless it has been sent to the opposing counsel or unrepresented litigant. If the information to be reviewed by the mediator or evaluator is a tape recording; video cassette; movie film; personal diary; or journal of the other party, that item must be delivered to the opposing counsel or unrepresented litigant at least 7 calendar days before submitting the item to the evaluator or mediator. If the information is an audio recording it shall be accompanied by a written transcript of the recording. The mediator or evaluator shall immediately return any submitted information that was not sent to the opposing counsel or unrepresented litigants in accordance with the foregoing.

**G. Consultation Between Attorneys and Evaluator.** If both parties are represented by attorneys and the attorneys want to confer with the evaluator, they may schedule a time that is agreeable to the attorneys and the evaluator. The evaluator will not meet with one attorney unless the opposing attorney is available in person or by telephone. The evaluator may have ex parte contact with either attorney or party at any time in the evaluation process to obtain necessary information. Neither party or attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by telephone. If, during the course of the evaluation, a party by oral communications with the evaluator raises issues or allegations which can influence the evaluation, the evaluator shall give the other party an opportunity to respond before completing his or her report.

If one attorney refuses or is unwilling to meet with the evaluator, the other attorney may meet individually with the evaluator pursuant to court order upon ex parte application.

**H. Information from Children - Not Confidential.** If a child provides information to a mediator or evaluator, there is no guarantee the information will be kept confidential.

**I. Involvement of Children in Process.** A child seen with one parent shall also be seen with the other parent unless there is a court order stating otherwise or, in an unusual case, the evaluator determines that such observation is unnecessary or not in the best interest of the child and notifies counsel and the parties of the reasons. The mediator or evaluator has discretion to determine the number of interviews and amount of time spent with each parent-child combination and whether siblings should be interviewed separately or jointly.

**J. Recommendation by Evaluator or Mediator.** The mediator or evaluator's written recommendation will be considered by the Court at the time of the hearing, subject to a party's right to cross-examine the mediator or evaluator.

*Unless both parents participated in the evaluation, or there is a court order in this regard, the mediator or evaluator shall not make recommendations regarding custody and/or visitation.*

This rule does not prevent an evaluator from seeing only one parent in order to give an opinion or assessment regarding a particular aspect of the case or to resolve questions related to that parent, provided the opinion or assessment does not go to the ultimate issue of which parent should have primary physical custody of the child or a parent's timeshare. However, the evaluator should have contact with the other parent regarding the referring issue or question.

A copy of the recommendation shall be released simultaneously to counsel for all parties or litigants, and to Family Court Services when FCS was previously involved. If the parties have so stipulated at the outset of the evaluation, the parties may read the entire report and/or supporting information and test results but may not have a copy. Relevant portions of the information and test results regarding a party may be provided to the party's therapist upon written request.

Unless otherwise ordered, the written report of the evaluator shall be lodged with the Court and shall be admitted without further foundation. Either party may call the evaluator, upon reasonable notice, to examine the evaluator on their report and/or their recommendations.

If requested by subpoena, the underlying data, including test results and all written correspondence or documentation upon which the evaluator relied, will be produced. The party seeking the underlying data shall be solely responsible for all copy costs. However, any other party to the action shall be provided with a copy, upon written request. The requesting party shall be responsible for the reasonable costs of copying the documentation.

To the extent some documents within the control of the evaluator are privileged, those documents cannot be released or copied, except upon a specific court order.

**K. Sealing Reports, Filing Recommendation.** Upon the request of either party, counsel for the child or FCS, the Court may consider sealing an FCS report.

All reports submitted by other mental health professionals shall be sealed with the exception that the recommendation made by an evaluator shall be separated from the report and included in the Court file.

**L. Confidentiality of Reports.** An evaluation report shall be confidential and unavailable to any person except the Court, the parties, their attorneys, their experts, FCS and any person to whom the Court expressly grants access by written order made with prior notice to all parties. Absent a court order to the contrary, minors shall not have access to the evaluation report.

Anyone receiving the evaluator's report shall not give copies of, or parts of, the report to anyone who is not assisting in the preparation of the case. These reports usually contain very sensitive information and shall not be used to cause unnecessary embarrassment or harm to the parties but shall be handled in a responsible, confidential manner for purposes limited to the litigation.

## **CHAPTER 11**

### **JUDGMENTS AND ORDERS**

#### **RULE 5.64 JUDGMENT BY DEFAULT OR UNCONTESTED HEARING**

##### **A. Dissolution or Legal Separation**

1. A dissolution or legal separation may proceed by way of default or stipulation. The judgment of dissolution or legal separation is obtained by testimony at a default prove-up or uncontested hearing or by stipulation and/or affidavit pursuant to Family Code section 2336.
2. To obtain entry of default for a judgment of dissolution or legal separation, the Petitioner must complete and file a proof of service of preliminary declaration of disclosure (Declaration Regarding Service of Declaration of Disclosure, Form FL-141) and a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the Court clerk as the return address. After default is entered, the Petitioner may apply to the Court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Dissolution or Legal Separation (Form FL-170), Judgment (Family Law) (Form FL-180) on pink paper with or without a written agreement signed by both parties and Notice of Entry of Judgment (Form FL-190) with envelopes with the Court's address as the return address and stamped and addressed to each party. If a default judgment is submitted without a written agreement signed by both parties, the Court will set a default hearing and notify Petitioner of the day and time.
3. If a default judgment is submitted with a written settlement agreement signed by both parties, the judgment packet must also include a Declaration Regarding Service of Final Declaration of Disclosure (Form FL-141) from each party unless waived consistent with state law (see Family Code 2105) or included in the original proof of service. If parties did not exchange final Declarations of Disclosure, a Stipulation and Waiver of Final Declaration of Disclosure (Form FL-144) or a separate stipulation signed by each party must be included. A waiver included in a marital settlement agreement or stipulated judgment is not sufficient. Respondent's signature on the written settlement agreement or stipulated judgment must be notarized.
4. If the proposed default judgment is not a stipulated judgment and includes division of property, a fully completed current property declaration (Property Declaration, Form FL-160) including values must be filed. The Court cannot divide any assets or debts that are not listed on the petition or property declaration(s) filed with the Court and served on Respondent.
5. If the proposed default judgment is not a stipulated judgment and includes provisions for child support, spousal support or a waiver thereof or attorney's fees or costs, the moving party must also file a current Income and Expense Declaration (form FL-150) on green paper. Neither child nor spousal support shall be granted unless the moving party sets forth an estimate of the other party's income in the Income and Expense Declaration. If the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history or other relevant facts.

##### **B. Nullity**

1. A Nullity Judgment may proceed by way of default. Because findings must be made by the Court regarding a nullity, nullity judgments may not be entered by way of stipulation.
2. Requests for a default judgment in a nullity action must be accompanied by a declaration setting forth the factual basis for the request. If there is even minimal doubt that the nullity will be granted, Petitioner can set forth in the original petition a request for a nullity or, in the alternative, a dissolution. If Petitioner requests either the nullity or the dissolution, then all of the requirements for a judgment of dissolution will apply as set forth above.
3. If Petitioner requests only a judgment of nullity, then Petitioner must file a Request to Enter Default (Form FL-165) and a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the Court clerk as the return address. After default is entered, Petitioner may apply to the Court for the relief sought in the Petition by filing an original and 2 copies of a judgment packet. A judgment packet must contain the following documents:

Judgment (Family Law) (Form FL-180) on pink paper and Notice of Entry of Judgment (Form FL-190) with envelopes with the Court's address as the return address, stamped and addressed to each party. The Court will set a default hearing and notify Petitioner of the day and time.

### **C. Paternity**

1. A Judgment in a paternity action may proceed by way of default or stipulation. The judgment is obtained by testimony at a default prove-up or uncontested hearing or by stipulation and/or affidavit through Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support) (Form FL-230) with attached Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Forms FI-235) one signed by each party. Where the parties have a written agreement, the parties can submit a Stipulation for Entry of Judgment Re: Establishment of Parental Relationship (Form FI-240).

2. To obtain a default judgment in a paternity action, the Petitioner must complete and file a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the Court clerk as the return address. After default is entered, the Petitioner may apply to the Court for the relief sought in the Petition by filing an original and 2 copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support) (Form FL-230), Judgment (Uniform Parentage – Custody and Support) (Form FL-250) on pink paper with or without a written agreement /stipulated judgment and Notice of Entry of Judgment (Form FL-190) with envelopes with the Court's address as the return address, stamped and addressed to each party. If a default judgment is submitted without a written agreement/stipulated judgment, the Court will set a default hearing and notify Petitioner of the day and time.

### **D. Stipulated Judgments**

1. Stipulated judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a judge pro tem; 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal; and, 3) Stipulation and Waiver of Final Declaration of Disclosure signed by each party (Form FL-144), where applicable.

2. Stipulated judgments which contain orders regarding child support must include the following Child Support Acknowledgments:

Each party acknowledges the following:

- a) They are fully informed of their rights concerning guideline child support;
- b) They have agreed to the child support provisions of this Agreement without coercion or duress;
- c) This Agreement is in the best interests of the child involved;
- d) The needs of the child will be adequately met by this agreed-upon child support;
- e) And they have not assigned the right to support to the county, neither party is receiving public assistance and no public assistance application is pending as required by Family Code section 17404.

3. Stipulated judgments which contain orders regarding child custody and/or visitation must include the following Family Code section 3048 language:

The parties declare and agree to the following:

- a) This court has jurisdiction over the minor child as California is the child's home state.
- b) Both parties were personally present at the execution of the attached custody/ visitation agreement, both have knowledge of their right to a hearing in this matter and both waive their right to the hearing based upon the attached custody and visitation agreement. The parties agree the habitual residence of the child is the U. S. A.
- c) Both parties acknowledge being advised that any violation of this order may result in civil or criminal penalties or both.
- d) Each party declares under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

## **RULE 5.65 PREPARATION OF ORDERS AND JUDGMENTS**

**A.** Counsel for the moving party shall prepare a formal order or judgment unless the Court orders the other party to do so. (The party preparing the original proposed order or judgment is referred to in this Rule as the "preparing party".) Findings and Orders After Hearing shall be prepared on brown paper and judgments shall be prepared on pink paper. The order or judgment shall be prepared so that at least 2 lines of text appear on the page which will have the judge's signature, and no text may appear after the judge's signature.

**B.** The order or judgment shall be prepared and submitted to the other party (referred to in this rule as the "responding party") within 10 calendar days of the hearing. The preparing party shall forward it to the responding party for approval as to form and content unless the Court authorized the preparer to submit it directly to the Court. The responding party shall have 10 calendar days from the date the proposed order or judgment was mailed to review the order and either sign it as prepared or notify the preparing party in writing of objections to its content.

**C.** If the responding party fails to timely approve or object to the order or judgment, the preparing party shall send a second letter to the responding party stating that the proposed order or judgment will be submitted to the Court for signature if no written response to the order is received within 5 calendar days of the second letter. If there is no written response to the second letter, the preparing party shall submit the following to the Court clerk: (1) the proposed order; (2) copies of both letters to the responding party; and, (3) a declaration explaining the circumstances and requesting that the proposed order be signed by the judicial officer.

**D.** If the responding party timely objects to the proposed order or judgment and the parties cannot thereafter agree on the language of the order or judgment, the Court will be guided by the transcript of the hearing. Within 10 calendar days of receiving written objections to the proposed order or judgment, the preparing party shall request and advance the cost for a transcript. Each party shall be responsible for one-half the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill shall be immediately provided to the responding party. No later than 25 calendar days after delivery of the copy of the transcript to the responding party (regardless of whether the copy is delivered personally or by mail), the parties shall exchange new proposed orders or judgments based on the transcript. If the parties still cannot agree on the language of the order or judgment, then no later than 45 calendar days after delivery of the copy of the transcript to the responding party, the preparing party shall submit the following to the judicial officer who made the ruling: (1) both parties' final proposed orders or judgments; (2) a copy of the transcript; (3) all written objections from all parties; and (4) a clear explanation as to how the final proposed orders or judgments differ. Copies of all papers submitted to the Court shall be immediately served on the responding party. The proposed order or judgment accepted by the judicial officer will be executed and filed. Failure to comply with this rule may subject a party or the attorney to sanctions.

**E.** Counsel who are no longer attorneys of record have a professional responsibility to the Court and to their client(s) to follow the above rules for preparation and approval of orders if they were in fact attorney(s) of record at the time of the hearing. Non-payment of prior fees shall not be a basis for failing to review or prepare the Court's orders pursuant to this rule.

## **CHAPTER 12 MISCELLANEOUS**

### **RULE 5.66 CHILD SUPPORT**

**A. Amount of Support** In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State or Federal Law, the amount shall be

determined pursuant to Family Code section 4050 *et seq.*

**B. Presumptions Used to Calculate Support** Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions shall be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors (such as the fact that the parties are likely to file joint returns for the current tax year) and any material generated by computer programs certified by the Judicial Council:

1. Single Status will be presumed if the party has less than 50 percent time share with the child of the relationship before the Court and does not have any additional dependents. In such an event, the Court shall presume there is one exemption for tax withholding purposes.
2. Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the Court or has another dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus the number of other dependents the party is entitled to claim for income tax purposes.
3. Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes shall be that to which the party is entitled for income tax purposes.
4. The Court will apply the "standard deductions" unless sufficient evidence is presented to allow the Court to determine appropriate itemized deductions.
5. Time sharing percentages will be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it shall be assumed that the hours credited to a parent who is not the primary caretaker shall begin at the time the child is transferred to his or her care and shall not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child's school or day care provider. "Primary caretaker" refers to the parent who has custody of the child the majority of the time.

**C. Income and Expense Declarations** In any proceeding in which a party is seeking child support, both parties shall comply with Rule 5.49 regarding the filing of current Income and Expense Declarations.

**D. Stipulations**

**1. Mandatory Language** - In order to be accepted by the Court, any written stipulation for the payment of child support must include the following language: "The parties declare all of the following:

- a) They are fully informed of their rights concerning child support.
- b) The order is being agreed to without coercion or duress.
- c) The agreement is in the best interests of the children involved.
- d) The needs of the children will be adequately met by the stipulated amount.
- e) The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and/or Family Code section 17404, and no public assistance application is pending."

**2. Issuance of Wage Assignment Order** A written stipulation for the payment of child support must include the following or similar language: "A wage assignment order shall issue for the payment of support ordered pursuant to this agreement."

**3. Stay of Service of Wage Assignment Order** The stipulation may provide for the stay of service of the wage assignment order by including the following or similar language: "Pursuant to Family Code section 5260 *et seq.*, the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligation set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment order until the stay is terminated pursuant to Family Code section 5261."



#### **RULE 5.67 SPOUSAL SUPPORT GUIDELINE**

San Diego County has declined to adopt any specific spousal support guideline. The Court will consider all relevant factors in setting temporary spousal support including guideline calculations based upon any formulae adopted in other counties of this state.

#### **RULE 5.68 ATTORNEYS SEEKING TO BE RELIEVED AS ATTORNEY OF RECORD**

Absent a properly executed substitution of attorney form, attorneys will not be relieved unless a properly served notice of motion or OSC (using the applicable Judicial Council form) is before the Court. Counsel shall comply with California Rules of Court Rule 376. The entry of a status-only judgment shall not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.

#### **RULE 5.69 BIFURCATION OF MARITAL STATUS**

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate shall be filed on the appropriate Judicial Council form which requires at least 30 days' notice. If appropriate, the Court order for bifurcation shall include the language set forth in **Appendix H**. An interim domestic relations order shall be issued if there is a community property interest in an ERISA pension plan. If appropriate, the interim order will include the language set forth in **Appendix I**.

#### **RULE 5.70 WRITS OF EXECUTION**

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration shall clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received and a running total of the amount owing. The supporting declaration for either type of judgment or order shall also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support or family support in which case Family Code section 4502 will govern.

The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and a current Income and Expense Declaration must be filed with the application. If the moving party is requesting interest on the arrearages or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages or a cost bill shall be filed.

#### **RULE 5.71 ELISORS**

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for the appointment of an elisor, the application and proposed order shall designate "The Clerk of the Court or the Clerk's Designee" as the elisor. The application shall not set forth a specific court employee. The declaration supporting the application shall include specific facts establishing the necessity for the appointment of an elisor.

If the Court grants the application for appointment of an elisor, the applicant shall contact the business office to make an appointment for the actual signing of the document(s) to ensure the

availability of an authorized elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).

#### **RULE 5.72 APPOINTMENT OF COUNSEL FOR CHILDREN**

A child's attorney is charged with the representation of the child's best interests. In addition to the professional requirements of advocacy and the provisions of Family Code sections 3150 and 3151.5, the child's counsel shall gather and present to the Court all facts that bear on the best interests of the child, including any preferences of the child. The following rules shall govern the appointment of counsel for children pursuant to Family Code sections 3150 through 3153.

**A. Appointment of Counsel.** In any Family Law or other proceeding where 2 or more persons are disputing the division of time with or responsibility for a minor child (i.e. physical or legal custody) or the Court determines that the appointment is justified by the facts of the specific case, the Court should consider the appointment of an attorney to represent the best interests of the child. The appointment may be made if the Court is requested to do so by either party, the attorney for either party, a mediator performing the duties under Family Code section 3170 *et seq.*, a professional person making a custody recommendation under Family Code sections 3110 *et seq.*, a court appointed guardian ad litem or special advocate, the child or any relative of the child. The appointment may also be made on the Court's own motion, even over the objection of the parties.

#### **B. When Counsel for a Child May Be Appointed.**

Counsel for a child may be appointed under the following circumstances:

1. The dispute is highly adversarial, exceptionally intense, protracted or the parties are so embroiled in the dispute that the needs of the child are being neglected.
2. The child is subjected to stress on account of the dispute which might be alleviated by the intervention of counsel representing the child.
3. The parties are without counsel and the Court or Family Court Services has reason to believe that the child may be at risk or that the information provided by the parents is either insufficient or unreliable.
4. There is an allegation of child abuse and there is a pending custody dispute between the parents. The appointment will ordinarily be made as soon as these issues are brought to the attention of the Court or Family Court Services.
5. There are allegations that a parent, stepparent or other person with the parent's knowledge has physically, mentally or sexually abused the child.
6. It appears that neither parent is capable of providing a stable and secure environment for the child.
7. The child is capable of verbally expressing his or her views and/or preferences and no psychological evaluation has been ordered.
8. The parties agree that counsel should be appointed for a child and the Court determines there is good cause to do so. In addition to informing the Court of a joint request for appointment of counsel during a noticed hearing, a written stipulation and declaration in support of a joint request may be presented to the Court during *ex parte* hours or in a manner designated by the Court.
9. A matter is before the Family Law Court within one year of issuance of an exit order from Juvenile Court. Unless a public defender has been representing the child in Juvenile Court, the child's Juvenile Court attorney, if available, will continue on the case and shall be appointed by the Family Law Court so that the attorney's case history, knowledge and experience will not be lost.
10. A matter is calendared in Family Law Court more than one year after Juvenile Court involvement has terminated. If the child was represented by private counsel and not by a public defender while in Juvenile Court, the Court will consider whether the child's Juvenile Court attorney should be appointed by the Family Law Court so that the attorney's case history,

knowledge and experience will not be lost.

11. The parties disagree regarding medical treatment for the child and the child's health is at risk.

12. There is an issue whether to waive a privilege on behalf of the child.

13. There are allegations of domestic violence and the child is the only witness.

14. The best interests of the child appear to require special representation.

### **C. Procedure for Appointment of Counsel.**

1. The Court will determine which of the following methods will be used for the selection of counsel:

a) By the judge's selection of a panel member;

b) By the parties' stipulation to a panel member; or

c) By the parties' selection from one of the next three names on the list of panel members.

2. Upon selection of counsel for a child, the Court clerk shall contact the attorney to determine his or her availability to accept the appointment. If the attorney is not available, another panel member shall be selected.

3. Once counsel has been selected and has accepted the appointment, the Court will:

a) Advise the parties that a determination will be made as to the method of payment pursuant to Family Code section 3153 at a subsequent hearing; and

b) Order both parties and claimants, if any, to file and serve current Income and Expense Declarations prior to the next hearing.

4. At the Court's discretion, the Court may conduct a hearing within 2 weeks to make the determination for payment and to specify the issues to be addressed by the child's counsel. The court clerk shall notify the prospective appointee of the date and time for hearing.

5. **Meet and confer requirements:** At the hearing at which counsel for the child is appointed, the Court will order the parties to meet and confer as follows:

a) **Both parties represented:** Counsel for the parties shall meet and confer on issues to be addressed by counsel for the child. Counsel for the parties shall prepare a joint statement of the issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. The child's counsel shall be provided with a copy of this joint statement.

b) **Once party represented:** Counsel for the represented party shall meet and confer with the unrepresented party and shall prepare a statement of the issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. Counsel for the represented party shall provide a copy of this statement to the child's counsel.

c) **Unrepresented parties:** Except in cases with allegations of domestic violence or cases in which the Court believes that a meet and confer would be ineffective, the parties shall meet and confer after the court hearing appointing counsel for the child and prepare a statement of issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. This statement shall be provided to the Court clerk, who shall provide it to the child's counsel with the Order Appointing Counsel for Child.

### **D. Contents of Order Appointing Counsel for Child; Conduct of Hearing; Distribution of Order Appointing Counsel for Child.**

1. The Court will issue an Order Appointing Counsel for Child on Form SDSC D-41 and issue a minute order which will include the following:

a) The scope of counsel's duties with specificity and the issues which gave rise to the appointment of the child's counsel; and

b) Any tasks expected to be performed by the child's counsel to benefit the child.

The clerk will provide a copy of both orders to the appointed counsel.

2. Pursuant to Family Code section 3151(b), the court order shall specify whether the child's counsel shall prepare a written report to be filed with the Court and served upon the parties in

advance of any hearing.

**3.** Pursuant to Family Code section 3153, the Court shall determine:

- a)** Whether both parties together or individually are financially able to pay all or a portion of the fees for the appointed counsel; and
- b)** Whether the entire amount or a portion of the child counsel's fees shall be paid by the Superior Court.

**4.** The Court should determine the method of payment for the attorney fees and costs associated with the child's representation. If the Court determines that payment for services of the child's counsel is to be paid by the Superior Court, the Court shall direct the clerk to provide a copy of the Order Appointing Counsel for Child to the San Diego Superior Court.

**5.** The Court shall order the parties to provide information and sign releases to permit all professionals who are or have been involved with the parties and/or the child to provide information as requested by the child's counsel.

**6.** In the event the child's counsel is not present at the appointment hearing and the child's counsel needs further direction regarding the scope of the appointment beyond that contained in the minute order or Appointment Order, upon ex parte application with notice to all parties, counsel may request direction from the Court.

**7.** The Court shall order that the parties or their attorneys provide the child's counsel with copies of all pleadings, orders, reports, other court documents and correspondence that are relevant to the custody, visitation or other child related issues, unless the child's counsel has requested otherwise. If the child's counsel is being paid by the Superior Court and if the parties do not have copies of the documents, the child's counsel may request copies of relevant documents from the court staff at no cost to the child's counsel.

**8.** After a hearing, the Court shall direct counsel for one of the parties to prepare the order or, in the event neither of the parties is represented, the Court shall direct the child's counsel to prepare the order. The order, if prepared by the child's counsel, may be submitted directly to the Court for approval unless otherwise ordered by the Court.

**9.** The Court shall reserve jurisdiction to:

- a)** Consider payment by the Superior Court;
- b)** Require the parties to reimburse the Superior Court; or
- c)** Order the parties to pay the child's counsel at his/her standard hourly rate.

**10.** The Order Appointing Counsel for Child shall be distributed as follows:

- a)** Child's counsel;
- b)** Each party;
- c)** Family Court Services;
- d)** Court file; and
- e)** Superior Court (for payment).

**E. Appointment for 2 or More Children.** If there are 2 or more children, the Court shall consider whether there may be a conflict between the children such that one attorney cannot adequately represent all of them.

**F. Rights and Obligations Upon Appointment of Counsel.**

**1.** Once counsel for a child has been appointed, he or she shall be given notice of all future proceedings and the child shall be treated as a party to the action. Accordingly, all written communications and documents regarding child custody/visitation and related issues shall be copied to the other attorney and the child's counsel. The child's counsel shall participate in any proceeding in which custody, visitation or related matters are at issue. The child's counsel may participate in other proceedings if counsel believes the child's best interests would be served by such participation.

**2.** The child's counsel must interview or observe the child when the child is living in the County of San Diego.

**3.** The child's counsel shall not be charged for the following:

- a)** Filing fees including a first appearance fee when filing any motion on behalf of the child;

- b) For any photocopies requested from the Court's files concerning the child; or
- c) Any court reporter's fees subject to the Court ordering payment of the fees by one or both of the parties. Prior court authorization is required when the child's counsel orders a transcript. The child's counsel shall submit a request for the Court to pay for a transcript including a brief description of the reason the transcript is necessary. Child's counsel shall maintain a record of fees waived by the Court. The Court reserves jurisdiction to order the parties to reimburse the Court for fees waived by the Court.
- 4. Without notice, the child's counsel may communicate, either by telephone or by letter, with FCS and/or with any evaluator, including psychological evaluators. However, with respect to other written documents (i.e., from third parties, agencies or institutions) that are provided by the child's counsel to FCS or an evaluator, the child's counsel is subject to the same local rules regarding psychological evaluations and FCS communications as are other counsel, as set forth in Rules 5.62 and 5.63.
- 5. The representation of children shall be in compliance with Family Code sections 3151 and 3151.5.
- 6. If counsel for a child files a motion on behalf of the child, counsel may sign the Application for Order and Supporting Declaration which shall contain the details of the requested relief and the supporting information for the request. If a motion is filed by a party and counsel for the child wishes to file a response on behalf of the child, counsel may sign the Responsive Declaration to Order to show Cause or Notice of Motion which shall contain the details of the child's response and the relevant supporting information.
- 7. Once the child's counsel has been appointed, the Court generally will not accept any stipulated order concerning custody or visitation or the child's counsel fees unless the child's counsel has signed the stipulation. Counsel for the child may not stipulate to waive reimbursement to the Superior Court for payment of counsel's fees.
- 8. The child's counsel may retain experts or investigators only with prior court approval and notice to the parties.
- 9. Child's counsel should seek a court hearing to address reimbursement of any fees paid and costs waived by the Superior Court.
- 10. At such time as counsel is appointed for a child, the parties shall complete and sign, under penalty of perjury, the Confidential Information for Minor's Counsel and Accounting Department form attached as **Appendix J** and deliver it to the clerk at the department of appointment at the time of the appointment.

**G. Prerequisites for Placement on Court-Appointment Panel.** An attorney shall be appointed only if he or she is a member of the Court-appointed panel. The list of panel members shall be maintained by a person designated by the Supervising Judge of the Family Law Courts.

In order for an attorney to be listed on the Court-appointed panel, the attorney must:

- 1. Fill out the application form available from a Family Law judicial secretary;
- 2. Have attended the most recent training session sponsored by the San Diego County Bar Association or attended a supervised tape showing of that session;
- 3. Have completed 5 years of practice with at least a 50% concentration in Family Law, juvenile court dependency and/or guardianship proceedings or had other comparable training, including extensive experience with child custody proceedings. The Supervising Judge of the Family Law Courts or the Judge's designee will determine if an attorney has had comparable other training and has had sufficient experience with child custody proceedings. An attorney who has been excluded from representing children in Juvenile Court will be excluded from the panel;
- 4. Have represented a party in at least 5 contested custody/visitation proceedings in Family Court in the past 3 years;
- 5. Agree that the application form can be made available for review by the counsel representing the parents or the unrepresented litigants; and
- 6. Maintain the minimum amount of malpractice insurance required by the State Bar. For cases where the child's counsel is paid by the Superior Court, the minimum amount of malpractice

insurance is higher than what is required by the State Bar. Currently, the minimum required in such cases is \$250,000/\$500,000.

**7.** The application for participation in the panel shall be submitted to the Counsel for Children Subcommittee of the San Diego County Bar Association which shall present the application for consideration at its next meeting and determine whether the applicant shall be recommended to the Supervising Judge of the Family Law Courts or the Judge's designee shall determine whether the application shall be accepted.

**H. Education Requirements.** The Counsel for Children Subcommittee shall establish education requirements for participation in the Court-appointed panel, and for remaining on the panel. Those requirements shall include, but not be limited to, domestic violence training.

**I. Termination of Appointment.** The Court, in its discretion, shall consider the termination of the appointment of the child's counsel under the following circumstances:

- 1.** At the time a final order or judgment has been filed, or 90 days thereafter; or
- 2.** If no motions related to custody or visitation issues have been filed within the preceding 6 months, upon the filing of a Notice of Withdrawal, Form 1290.5; or
- 3.** A motion filed by any party for good cause; or
- 4.** A motion to be relieved filed by the child's counsel if the child's counsel does not believe that he or she can effectively represent the child.

The appointment of the child's counsel shall not be terminated if the Court, upon a showing of good cause, deems it necessary to extend the appointment, or if the Court requests periodic review or monitoring of the child related issues before the Court. At any hearing for termination of child's counsel, the Court shall address the issue of reimbursement of fees paid to child's counsel by the Superior Court. All parties shall file a current Income and Expense Declaration at the hearing.

**J. Grievance Against Child's Counsel.** Any party may file a grievance against the child's counsel on the form prescribed by the Counsel for Child Children Subcommittee. The scope of the grievance is limited to whether the attorney against whom the grievance is filed shall remain on the Court appointment list and be eligible to receive future appointments. Any issues regarding fees charged by the child's counsel or the removal of the child's counsel from the case must be addressed to the judge to whom the Court case is assigned.

## **RULE 5.73 APPRAISAL OF CLOSELY HELD BUSINESS INTERESTS**

### **A. Standard of Value for Business Appraisal**

Businesses are appraised in Family Law proceedings to establish the value of the interest to the spouse who is awarded the business. Unless otherwise ordered by the Court, the standard of value shall be the "marital value" which means the investment value of the business interest to a hypothetical, objective investor, considering the following factors:

- 1.** Since there will be no change of ownership, there shall be no reduction in value to reflect the risk inherent in a transfer of the business interest.
- 2.** Pursuant to Family Code section 771, in establishing sustainable earnings, separate property earnings attributable to the operating spouse's efforts after the date of separation shall not be considered.
- 3.** There will be no reduction in value for capital gain or other taxes associated with a sale.
- 4.** A business may have "marital value" even though it is not saleable.
- 5.** The business interest being valued may include assets and liabilities which would not be included in a sale, such as cash, accounts receivable, accounts payable and non-operating assets and/or liabilities.

### **B. Procedure to be Followed in Appraisal Process**

#### **1. Joint Appraiser**

- a) Before the initial Case Management Conference, the parties shall jointly retain a business appraiser.
- b) Before contacting a business appraiser for joint retention, counsel shall have agreed on the joint appraiser.
- c) If counsel cannot agree on a joint appraiser, a joint appraiser shall be appointed by the Court on ex parte motion or at the Case Management Conference.
- d) The appraiser shall be informed that he or she is retained as a neutral expert working for both parties. Within 14 days of being retained, the appraiser shall mail a written request to each counsel for documents and information.
- e) Within 30 days of the date the appraiser's request is mailed, each party shall provide the requested documents and information, including access to the site and to knowledgeable agents and employees.
- f) Counsel shall send opposing counsel copies of all correspondence and written documents submitted to the joint appraiser.
- g) Neither the parties nor counsel may initiate verbal communications with the joint appraiser unless the opposing counsel or the other party participates in the communication. The appraiser may, however, initiate verbal communication with only one attorney.
- h) If appraiser initiated communication raises a material issue, the appraiser shall communicate such development to the party or attorney who was not consulted.
- i) Within 60 days of the appraiser receiving all requested documents and information, the appraiser shall submit a draft appraisal report to each party.
- j) Within 30 days of issuance of the draft appraisal, a party desiring to do so shall, through counsel if represented, submit to the joint appraiser, their or their consultant's comments on and/or objections to the draft appraisal. The joint appraiser, after the 30<sup>th</sup> day and before the 60<sup>th</sup> day after the issuance of the draft appraisal, shall submit the final appraisal to both attorneys.
- k) Absent a court order to the contrary, the joint appraiser's fee shall be paid with community funds, or if there are no undisputed community funds, each party shall pay one-half of the joint appraiser's fee. The Court shall reserve jurisdiction to the time of trial to reallocate the fees paid.
- l) The joint appraisal shall be without prejudice to the right of either party to retain a review appraiser at that party's expense. Such expense shall be subject to reallocation only upon a showing of good cause. The review appraiser shall only consider documents and information provided to or considered by the joint appraiser.
- m) If a review appraisal is obtained, the joint and review appraisers shall confer and, prior to the settlement conference, shall present a joint statement listing the issues on which they agree and disagree and setting forth the basis for their respective positions. Upon submission of the joint statement, the review appraiser shall be deemed a designated expert witness.
- n) The joint appraisal report shall be received into evidence without further foundation. However, this shall not preclude either side from calling a review appraiser or from calling the joint appraiser for cross-examination. A \$750 witness fee shall be tendered to the joint appraiser before trial by the party intending to call the joint appraiser as a witness.
- o) These time guidelines may be modified by written agreement of counsel and the appraiser.

## **2. Date of Valuation**

Property will be valued as near as practical to the trial on property division issues, unless the property is a small business which is largely dependent on the operating spouse's skill, industry, reputation and guidance. In this case, the business shall be valued at the time of separation. If counsel are unable to agree on the valuation date, the joint appraiser shall value the interest at both date of separation and as near as practical to the time of trial.

## **C. Appraisal Reporting Requirements**

The appraisal shall state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal shall state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor

had on this rate. If the excess earnings method is chosen, the capitalization rates will normally be within the range of 20% (multiple of 5) to 100% (multiple of 1). If other methods are chosen, such as capitalization of net earnings or capitalization of net cash flows, other ranges of capitalization rates may apply. The appraiser shall state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal shall state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.

#### **RULE 5.74 DISCRETIONARY DISMISSAL**

Pursuant to Code of Civil Procedure section 583.410 and California Rules of Court Rule 372, cases in which a judgment has not been filed or which have not been brought to trial within two years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the hearing. If the Petitioner/Plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the Court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving the Department of Child Support Services shall be reinstated administratively once service has been obtained.

#### **RULE 5.75 FAMILY LAW FACILITATOR'S DUTIES**

In addition to the services provided by the Family Law facilitator pursuant to Family Code section 10004, pursuant to Family Code section 10005 the Family Law facilitator may:

- Meet with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Family Code section 10012;
- Draft stipulations on any issues agreed to by the parties;
- Prior to or at the hearing, and at the request of the Court, review the paperwork, examine documents, prepare support schedules, and advise the judge whether the matter is ready to proceed;
- Assist the clerk in maintaining records;
- Prepare formal orders after hearing where both parties are unrepresented;
- Serve as a special master and make findings to the Court, unless the facilitator has served as a mediator in the case;
- Assist the Court with research and any other responsibilities which will enable the Court to respond to litigants' needs; and
- Develop bar and community outreach programs that will assist unrepresented and financially disadvantaged litigants to gain meaningful access to the Family Court.

#### **RULE 5.76 SUPERVISED VISITATION REQUIREMENTS**

Providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern or volunteer operating independently or through a supervised visitation center or agency, are required to follow the legal requirements and obligations set forth in Standards of Judicial Administration section 26.2. Informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider are available at all locations of Family Court Services listed in

#### **Appendix A.**

#### **RULE 5.77 COMMUNICATION BETWEEN COURT DIVISIONS**

The Court shall develop procedures to facilitate communication between divisions regarding information involving child custody and visitation orders and criminal court protective orders pursuant to California Rules of Court, Rule 5.500.

#### **RULE 5.78 APPOINTMENT OF COUNSEL UNDER SERVICE MEMBERS CIVIL RELIEF ACT**

**A.** In the event the Court finds that the provisions of the Service members Civil Relief Act (Pub. L. No. 108-189 (2003), 50 U.S. C. App. 501-548, 560-593) applies, the Court may appoint Counsel pursuant to Section 521 (b)(2) of the Act for the purpose of seeking a stay pursuant to sections 201 and 202. The Court must grant a stay for at least 90 days upon request of court



appointed counsel if there may be a defense which cannot be presented in the absence of the service member, or counsel has been unable to contact the service member to determine the existence of a defense. A request for stay does not constitute an appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.

**B. After the initial 90 day continuance, the Court shall evaluate the case to determine if additional continuances are necessary. If court appointed counsel is unable to locate the service member, or believes additional continuances will not be helpful in determining the existence of a defense, the Court may relieve court appointed counsel. In appropriate cases, the Court may proceed by default if the requirements of the Act have been met.**

**C.** It is not the responsibility of appointed counsel to represent the service member on the merits of the matter, unless counsel is doing so pro bono or under a fee agreement reached with the service member. Appointed counsel accepts an appointment under this Act pro bono. However, in an appropriate case, the Court may compensate counsel at the rate of \$60 per hour up to a maximum of \$200 per appointment provided funding is available. In addition, the Court may order the service member to pay fees incurred in the representation directly to counsel.

## **APPENDIX A**

### ***M. ADDRESSES AND TELEPHONE NUMBERS OF COURTS, CALENDAR CLERKS AND FAMILY COURT SERVICES OFFICES***

#### **CENTRAL DIVISION**

##### **Family Court Building**

1555 6<sup>th</sup> Avenue  
San Diego, CA 92101-3296

##### Department F1

Court Clerk (619) 557-2001

IC Clerk (619) 557-2163

##### Department F2

Court Clerk (619) 557-2003

IC Clerk (619) 557-2196

##### Department F3

Court Clerk (619) 557-2005

IC Clerk (619) 557-2188

##### Department F4

Court Clerk (619) 557-2007

IC Clerk (619) 557-2064

##### Department F5

Court Clerk (619) 557-2009

IC Clerk (619) 557-2157

##### Department F6

Court Clerk (619) 557-2011

IC Clerk (619) 557-2164

##### Family Court Services

(619) 236-2681

#### **CENTRAL DIVISION**

##### **Madge Bradley Building**

1409 4<sup>th</sup> Avenue  
San Diego, CA 92101-3105

##### Department F9

Court Clerk (619) 687-2004

#### **DOWNTOWN FSD**

##### **County Courthouse**

220 West Broadway  
San Diego, CA 92101-3814

##### Department 42

Court Clerk (619) 531-4357

##### Department 43

Court Clerk (619) 531-3025

##### Department 44

Court Clerk (619) 531-3024

#### **EAST COUNTY DIVISION**

250 East Main Street  
El Cajon, CA 92020-3941

Business Ofc (619) 441-6770

##### Department 5

IC Clerk (619) 441-4495

##### Department 6

IC Clerk (619) 441-6633

##### Department 7

IC Clerk (619) 441-3494

##### Family Court Services

(619) 441-4387

#### **SOUTH COUNTY DIVISION**

500 3<sup>rd</sup> Avenue  
Chula Vista, CA 91910-5649

Department 6  
IC Clerk (619) 691-4877  
Department 7  
IC Clerk (619) 691-4877

Family Court Services  
(619) 691-4455  
**NORTH COUNTY DIVISION**  
325 South Melrose Drive  
Vista, CA 92081-6651

Department 15  
Court Clerk (760) 940-4596  
IC Clerk (760) 806-6137  
Department 16  
Court Clerk (760) 940-4800  
IC Clerk (760) 806-6139  
Department 17  
Court Clerk (760) 940-4593  
IC Clerk (760) 806-6136  
Department 18  
Court Clerk (760) 940-4591  
IC Clerk (760) 806-6251  
Department 19  
Court Clerk (760) 940-4587  
IC Clerk (760) 806-6138

Family Court Services  
(760) 940-4761



## APPENDIX B

### ALTERNATIVE DISPUTE RESOLUTION INFORMATIONAL NOTICE

Mediation, arbitration, Collaborative Family Law, the use of a Private Judge (Judge Pro Tempore) and judicial case management are methods of Alternative Dispute Resolution which are available to you at any stage of the proceedings in an action for the Dissolution, or Annulment of your marriage, or in an action for Legal Separation. The costs associated with any of these Alternative Dispute Resolution methods must be determined directly between you and the professionals you choose to use.

**Mediation** is a voluntary process in which the parties meet with an impartial mediator. The mediator assists the parties in clarifying issues, facilitating communication and considering options for settlement in order to reach a mutually acceptable agreement. This process is different from the Court controlled litigation process because, in mediation, the parties make the decisions instead of having a judge make them. In mediation, the parties control the division of their assets, the provisions for child and spousal support, and the sharing of their children. Discussions take place in the privacy of the mediator's office and no court appearances are necessary. When mediation is completed, a formal agreement is prepared and filed, and a Judgment is entered by the Court.

**Arbitration** is a voluntary process in which the parties select an independent third party to hear and consider the facts and evidence in their case and make decisions on their contested issues. These decisions may be final and binding or they may be nonbinding, as determined by the agreement of the parties. Parties can submit all or some of the contested issues in their case for decision by their arbitrator. If binding, the arbitrator's decisions are included in the Judgment entered by the Court.

**Collaborative Family Law** is a voluntary process in which both parties commit themselves to resolving their issues through a cooperative approach rather than adversarial litigation. This process relies on the commitment of the parties to exercise honesty, cooperation, and integrity in working toward the future well-being of each of the parties, and, if there are children, the family. A team of experts assists the parties in solving problems, developing options, and creating a positive context for settlement. Each party works with a collaborative Family Law attorney and a communication coach. The parties jointly hire a financial expert and, where appropriate, a child specialist to give the children a voice in the process. All information and documentation is voluntarily shared. The essence of the process is a series of face-to-face meetings between the parties and the relevant members of the professional team. When the process is completed, a written settlement agreement is prepared and filed, and a Judgment is entered by the Court.

**Using a Private Judge (Judge Pro Tempore)** is a voluntary process in which, **with the Court's permission**, the parties may agree to use a qualified individual (often a retired judge or an experienced Family Law attorney) to resolve some or all of the substantive or procedural issues in their case. The decisions made by the private judge in your case will have the same force and effect as decisions made by a regular trial court judge. Parties wishing to use a Private Judge must advise the Court as soon as possible by submitting a written stipulation signed by both parties and their attorneys (if they are represented). The name of the Private Judge selected by the parties, and the specific issues to be resolved by the Private Judge (if

less than the entire case) must be included in the written stipulation. Since the Court's case file can never be removed from the Courthouse, it is the responsibility of the parties to provide the Private Judge with a duplicate case file. The parties' written stipulation must also set forth their agreement regarding whether a transcript of the proceedings before the Private Judge will be created for appellate or any other purposes.

**These Alternative Dispute Resolution methods may or may not be appropriate for every case or individual. You should seek the advice of counsel regarding the best way to resolve your issues. If you decide to use one of these Alternative Dispute Resolution methods, it is suggested that you use the services of qualified professionals. If you have a need for emergency restraining orders, Alternative Dispute Resolution may not be appropriate at this time.**

You are encouraged to serve a copy of this fact sheet when you serve the Petition for Dissolution/Legal Separation/Annulment in this matter.

## APPENDIX C

### STIPULATION AND ORDER FOR APPOINTMENT OF JUDGE PRO TEMPORE

[Attorney's Name]  
[Firm name if Applicable]  
[Street Address]  
[City, State, ZIP]  
[Telephone No,]

Attorney for: [Client's Name]

### SUPERIOR COURT OF CALIFORNIA

### COUNTY OF SAN DIEGO COUNTY

In re the Marriage of:

Petitioner:

and

Respondent:

Case No.

STIPULATION AND ORDER FOR  
APPOINTMENT OF JUDGE PRO TEM;  
CONSENT AND OATH OF OFFICE;  
ORDER

In accordance with Article VI, Section 21 of the California Constitution and with Rule 244 of the California Rules of Court, the parties hereto personally and through their respective undersigned attorneys hereby agree as follows:

1. **Name of Judge Pro Tem.** [name of Judge Pro Tem], whose office and telephone number are, respectively, [address], [telephone number], is hereby appointed as a temporary judge (hereafter "Judge Pro Tem") in the above-captioned proceeding.

2. **Parties and Attorneys.** The names addresses and telephone numbers of the parties and their respective attorneys are as follows:

[Petitioner's name] [Petitioner's attorney, address, and telephone #]

[Respondent's name] [Respondent's attorney, address, and telephone #]

3. **Authority of Pro Tem Judge.** Pursuant to California Code of Civil Procedure Section

177, the Pro Tem Judge shall be empowered with all the authority allocated to a Judicial Officer of the California Superior Court to do the following:

- a. To preserve and enforce order in the Judge's immediate presence and in proceedings before the Judge when the Judge is engaged in the performance of official duties;
- b. To compel obedience of the Judge's lawful orders as provided in this code section;
- c. To compel the attendance of persons to testify in a proceeding before the Judge in the manner provided in this code section;
- d. To administer oaths to persons in a proceeding pending before the Judge and in all cases where it may be necessary in the exercise of the Judge's powers and duties;
- e. To oversee discovery and make any orders relative to any of the issues in dispute; and
- f. To decide the matters set forth below:
  - (1) [state the issues to be decided]

4. **Certified Shorthand Reporter.** The services of a certified shorthand reporter ("CSR") [shall/shall not] be present at all proceedings [optional: except at ex parte hearings]. If a CSR is present at a proceeding, all orders and judgments rendered by the Judge Pro Tem shall be appealable in accordance with applicable California Rules of Court and statutes. If a CSR is not present at a proceeding, the parties hereby waive their respective rights to the following:

- a. A statement of decision;
- b. Motion for a new trial; and
- c. Right to appeal.



5. **Restrictions.** The case file may not be removed from the court. The parties are responsible for providing the Pro Tem Judge with copies of all relevant pleadings, records and documents necessary to adjudicate the case at their own expense.

6. **Compensation.** The Pro Tem Judge shall be paid as follows: [state the terms of compensation]. [optional The court reporter shall be paid as follows: state the terms of compensation]. [optional: The Pro Tem Judge may allocate the Pro Tem Judge/court reporter fees between the parties].

7. **Miscellaneous.** Pursuant to California Evidence Code Section 703.5, the Pro Tem Judge shall not be compelled to testify as a witness in this proceeding. The Pro Tem Judge has judicial immunity to the same extent that a Judicial Officer of the California Superior Court.

8. **[optional] Facsimile Signatures.** Signatures may be obtained via facsimile.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[name of Petitioner]

\_\_\_\_\_  
[name of Respondent]

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[name of Petitioner's attorney]

\_\_\_\_\_  
[name of Respondent's attorney]

### **CONSENT**

I, [name of Pro Tem Judge], a member of the State Bar of California, hereby consent to act as a temporary judge in the above-captioned proceeding in accordance with the terms and provisions of this stipulation.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[name of Pro tem Judge]

### **OATH OF OFFICE**

I, [name of Pro Tem Judge], do hereby solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear truth and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties upon which I am about to undertake. I certify that I am aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[name of Pro Tem Judge]  
Judge Pro Tem

### **ORDER APPOINTING TEMPORARY JUDGE**

The stipulation of the parties and their respective attorneys that [name of Pro Tem Judge] act as a temporary judge in the above-captioned matter is hereby approved. Accordingly, for good cause shown, [name of Pro Tem Judge] is hereby appointed and designated as the temporary judge in the above-captioned proceeding and to make all orders necessary and proper to bring this case to judgment.

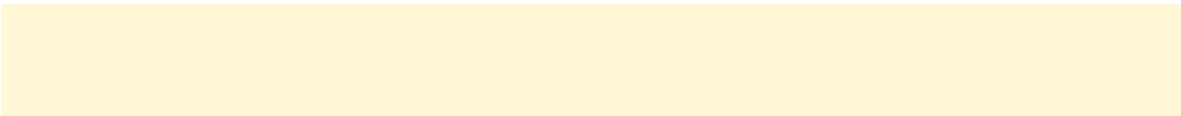
Dated: \_\_\_\_\_

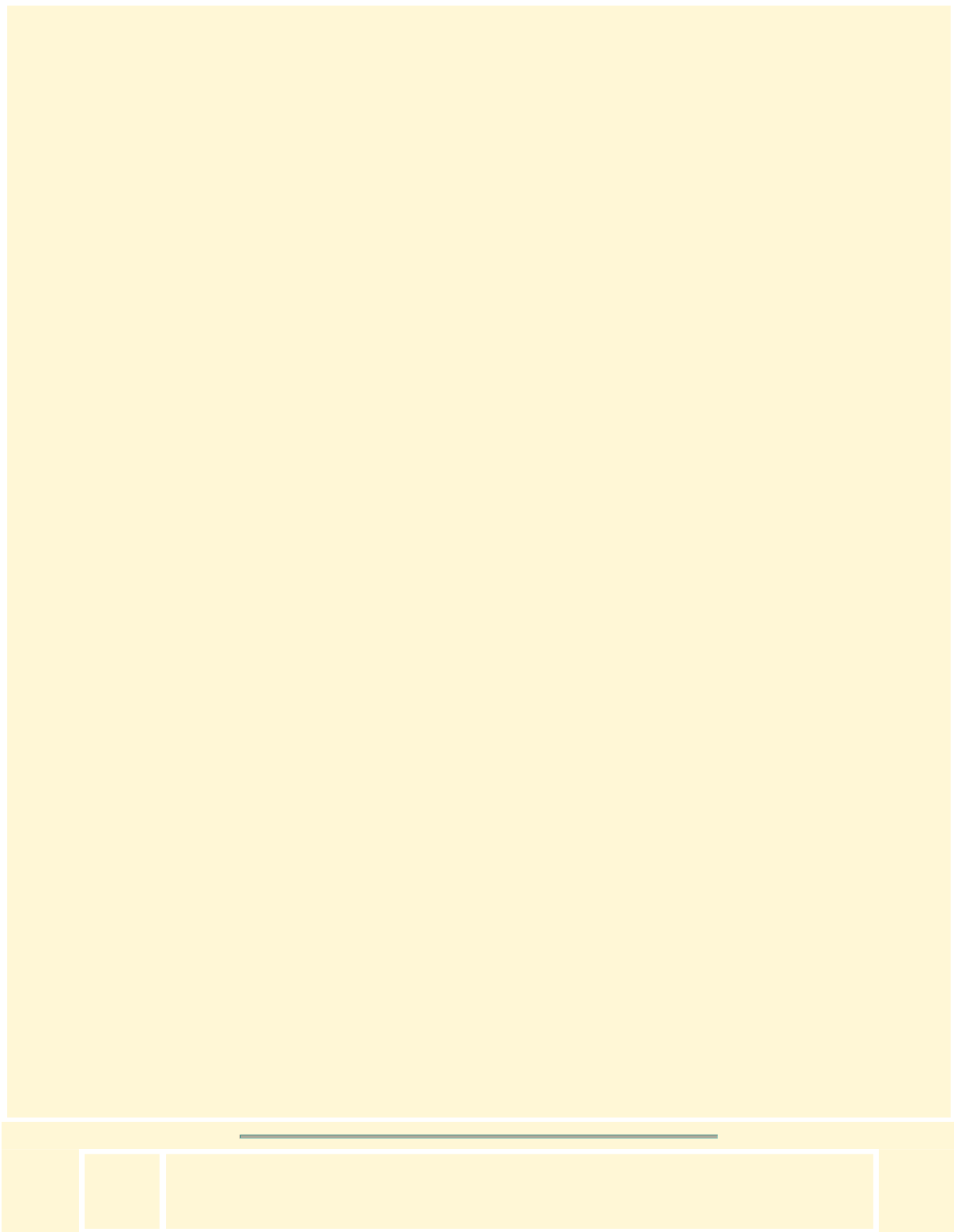
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

## APPENDIX D

[illegible]







**APPENDIX E**  
**MANDATORY TRIAL STATEMENT**

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

HUSBAND'S/WIFE'S

MANDATORY SHORT CAUSE

TRIAL STATEMENT

DATE:

TIME:

DEPT.:

**I. MEET AND CONFER STATEMENT:**

A. Date of Conference:

B. In Person/By Telephone:

C. Issues Settled Are: (Be Specific)

1.

2.

3.

D. Issues To Be Litigated Are: (Be Specific)

1.

2.

3.

E. If Counsel Failed To Meet And Confer, Explain Reasons in Detail.

**II. STATISTICAL DATA:**

A. Date of Marriage:

B. Date of Separation:

C. Length of Marriage:

D. Marital Status Terminated? \_\_\_\_ If so, date:

E. Husband's Age ( ) and Employment:.

F. Husband's Gross Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_

G. Husband's Paydays:

H. Cohabitee or New Spouse's Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_

I. Wife's Age ( ) and Employment:

J. Wife's Gross Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_

K. Wife's Paydays:

M. Minor Children:

Name Date of Birth Age Sex Residing With

**III. HISTORY OF PROCEEDINGS:**

(Briefly Summarize All Prior Court Proceedings)

#### **IV. HUSBAND'S/WIFE'S PROPOSALS RE ISSUES:**

(In Same Order As Issues Are Listed in Part I D Above)

1. Issue: (e.g., Spousal Support)
2. Issue: (e.g., Child Support)
3. Issue: (e.g., Attorney's Fees)

#### **V. ATTACHMENTS AND EXHIBITS:**

A. Where issues include the division of assets and debts counsel shall attach relevant schedules of the proposed division (See Attachment 1).

B. Other appropriate attachments may be included, and attachments required by Rule 5.51 (H),(I), and (J) shall be included.

#### **APPENDIX E - ATTACHMENT 1**

\_\_\_\_\_'s Proposed Division of Community Property

Gross Net Awarded To

Asset FMV Debt FMV Husband Wife

##### **I. STIPULATED**

	<b>fmv</b>	<b>debt</b>	<b>net</b>	<b>to H</b>	<b>to W</b>
Residence	560,000	460,000	100,000	100,000	0
Furniture	10,000	0	10,000	3,000	7,000
2002 Nissan Pathfinder	28,000	18,000	10,000	10,000	0
2000 Mazda Millenia	13,000	6,000	7,000	0	7,000
1998 Nomad RV	30,000	17,000	13,000	13,000	0
Husband's IRA	4,000	0	4,000	4,000	0
Wife's IRA	4,000	0	4,000	0	4,000
B of A Visa	0	734	(734)	(734)	0

##### **II. DISPUTED**

Rental Property	382,500	154,980	227,520	227,520	0
Pool Table	650	0	650	650	0
Husband's Pension	29,450	0	29,450	14,725	14,725
Husband's Epsteins		5,288	(5,288)	(5,288)	0
Bank of America Savings	25,212	0	25,212	7,578	17,634

---

<b>TOTAL</b>	<b>1,086,812</b>	<b>662,002</b>	<b>424,810</b>	<b>212,405</b>	<b>212,405</b>
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## APPENDIX F

### FAMILY LAW SETTLEMENT CONFERENCE AT ISSUE FORM

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> FAMILY COURT BUILDING, 1555 6TH AVE., SAN DIEGO, CA, 92101-3294 <input type="checkbox"/> MADGE BRADLEY BUILDING, 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA, 92083-6651 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA, 92020-3941 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649	<i>FOR COURT USE ONLY</i>
PETITIONER(S)	
RESPONDENT(S)	DATE
<b>FAMILY LAW SETTLEMENT CONFERENCE AT ISSUE FORM</b> <b>(San Diego Superior Court Rules, Division V, rule 5.11)</b>	CASE NUMBER

**I. RESOLVED ISSUES:**

- |  |   |
|--|---|
| 1. _____<br>2. _____<br>3. _____<br>4. _____<br>5. _____ | 6. _____<br>7. _____<br>8. _____<br>9. _____<br>10. _____ |
|--|---|

**II. ISSUES TO BE LITIGATED:**

- |  |   |
|--|---|
| 1. _____<br>2. _____<br>3. _____<br>4. _____<br>5. _____ | 6. _____<br>7. _____<br>8. _____<br>9. _____<br>10. _____ |
|--|---|

**III. PETITIONER'S WITNESSES:**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**IV. RESPONDENT'S WITNESSES:**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**V. EXHIBITS TO BE MARKED AND EXCHANGED BY:** \_\_\_\_\_

**VI. TRIAL TIME ESTIMATE:** \_\_\_\_\_

I AM A PARTY TO THIS ACTION, HAVE READ THE FOREGOING AND UNDERSTAND THAT, IN TRYING THIS CASE, I WILL BE LIMITED TO THE ITEMS AND TIME ESTIMATE UNDER PARAGRAPHS II & VI ABOVE.

---

Petitioner

---

Respondent

---

Attorney for Petitioner

---

Attorney for Respondent

---

Judge/Judge Pro Tem

---

Judge/Judge Pro Tem

-----  
----

**CONFIDENTIAL:**

Case Number \_\_\_\_\_ Case Name \_\_\_\_\_ vs \_\_\_\_\_ Date \_\_\_\_\_

## **APPENDIX G**

### **LONG CAUSE TRIAL RULES**

For any trial set on the long cause trial calendar (these rules do not apply to long cause OSC's) counsel must:

#### **A. SEVEN COURT DAYS OR MORE BEFORE TRIAL**

Personally meet and confer to exchange all of the following documents:

1. Trial statements (see **Appendix E**)
2. Trial briefs
3. Where support or fees are at issue, current Income and Expense Declarations including all required attachments.
4. A list of proposed exhibits (see attachment 1) and copies of actual exhibits. (In custody trials, counsel need not exchange the expert's test data, notes, etc., related to an evaluation previously performed if the data and report were previously provided to each counsel).\*
5. A list designating non-party witnesses (including name, address and telephone number) and the subject matter of each witness's testimony (see attachment 2).\*

#### **B. FOUR COURT DAYS BEFORE TRIAL**

1. Telephonically meet and confer to discuss stipulations on admissibility of exhibits, specifying objections to each exhibit to which admissibility is not stipulated, and discuss all aspects of any intended in limine motions.
2. If objections to exhibits are unresolved, or a motion in limine is to be filed, schedule appointment with court for pretrial conference to be held at least 2 court days before trial.
3. File with the clerk of the trial department and personally serve on opposing counsel any in limine motions (see attachment 3).
4. Arrange with the clerk of the trial department a date and time to pre-mark exhibits and to file original exhibits.
5. File trial statement, trial brief, Income and Expense Declaration and the Court's copy of the exhibits with the clerk of the trial department.

#### **C. THREE COURT DAYS BEFORE TRIAL**

1. File with the clerk of the trial department and personally serve on opposing counsel a written list of objections to the exhibits of the other party (see attachment 4).

#### **D. TWO COURT DAYS BEFORE TRIAL**

1. If there are unresolved objections to exhibits or if motions in limine were filed, both counsel shall confer personally with the Court to discuss the objections and motions. At that time, the Court may issue a tentative ruling on the issues presented.

## **E. DAY OF TRIAL**

1. All objections to exhibits and motions in limine will be heard on the record and a ruling will be issued before the presentation of opening argument.
2. Each party shall pay the mandated statutory court reporter fee for each half day of trial. It is the duty of counsel to know the amount of that fee before the day of trial so that counsel can deliver this amount to the clerk in the trial department before the start of each half day of trial. The amount shall be paid in cash or check. Checks can only be from a party or the attorney's client trust account. Checks shall be made payable to the Clerk of the Superior Court.
3. Each day, the morning session of trial will usually begin at 9 a.m. and end at noon with a 15 minute break at approximately 10:30 a.m. The afternoon session will usually begin at 1:30 p.m. and end at 4:30 p.m. with a 15 minute break at approximately 3:15 p.m. At the end each day of a multi-day trial, counsel and the Court shall review the next day's witnesses, examination time and any other calendaring issues.

**\*Any witnesses not disclosed pursuant to these rules shall not be permitted to testify at trial. Any exhibits not exchanged pursuant to these rules shall not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits.**

## **APPENDIX G - ATTACHMENT 1 LIST OF PROPOSED EXHIBITS**

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

LIST OF PROPOSED EXHIBITS

Petitioner/Respondent submits the following proposed exhibits:

1.

2.

3.

4. etc.

DATED: \_\_\_\_\_

Attorney for:.

## **APPENDIX G - ATTACHMENT 2 LIST OF WITNESSES**

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

LIST OF WITNESSES

Petitioner/Respondent intends to call the following witnesses at the time of trial to testify on the subjects stated:

NAME ADDRESS AND TELEPHONE NUMBER - SUBJECT OF TESTIMONY

1.

2.

3.

4. etc.

DATED: \_\_\_\_\_

Attorney for:.

**APPENDIX G - ATTACHMENT 3  
NOTICE OF MOTIONS *IN LIMINE***

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

**NOTICE OF MOTIONS *IN LIMINE***

Petitioner/Respondent requests the Court enter the following in limine orders for the reasons stated:

1.

2.

3.

4. etc.

This motion is based upon the records, files and pleadings in this action, the memorandum of points and

authorities submitted with this notice of motion, and any and all other matters which may be timely presented before the time of the hearing on this motion.

DATED: \_\_\_\_\_

Attorney for:.

**APPENDIX G - ATTACHMENT 4  
OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT**

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

**OBJECTIONS TO EXHIBITS OF  
PETITIONER/RESPONDENT**

Petitioner/Respondent objects to the following exhibits for the reasons stated:

**EXHIBIT OBJECTION**

1.

2.

3.

4. etc.

DATED: \_\_\_\_\_

Attorney for:.

**APPENDIX G - ATTACHMENT 5  
LONG CAUSE TRIAL RULES CHECKLIST**

**A. SEVEN COURT DAYS OR MORE BEFORE TRIAL**

- \_\_\_\_\_ 1. Personally meet and confer with opposing counsel.
- \_\_\_\_\_ 2. Exchange trial briefs.
- \_\_\_\_\_ 3. Where support or fees are at issue, exchange Income & Expense Declarations with required attachments.
- \_\_\_\_\_ 4. Exchange list of exhibits and copies of exhibits.
- \_\_\_\_\_ 5. Exchange list designating non-party witnesses (including name, address and Telephone number) and the subject matter each will testify to.

#### **B. FOUR COURT DAYS BEFORE TRIAL**

- \_\_\_\_\_ 1. Confer with opposing counsel telephonically to discuss objections to the exhibits and in limine motions.
- \_\_\_\_\_ 2. If objections to exhibits unresolved, or motion in limine to be filed, schedule appointment for pre-trial conference.
- \_\_\_\_\_ 3. File with the Court and serve in limine motions.
- \_\_\_\_\_ 4. Arrange with clerk to pre-mark exhibits and file original exhibits.
- \_\_\_\_\_ 5. File trial brief, Income & Expense Declaration and court's copy of the exhibits in trial department.

#### **C. THREE COURT DAYS BEFORE TRIAL**

- \_\_\_\_\_ 1. File with clerk of trial department and opposing counsel a written list of objections to the exhibits.

#### **D. TWO COURT DAYS BEFORE TRIAL**

- \_\_\_\_\_ 1. If there are unresolved objections to exhibits or if motions in limine were filed, confer personally with the Court.

#### **E. DAY OF TRIAL**

- \_\_\_\_\_ 1. All objections to exhibits and motions in limine will be heard and a ruling will be issued.
- \_\_\_\_\_ 2. Each counsel must pay the mandated statutory court reporter fee for each half day of trial.
- \_\_\_\_\_ 3. At the conclusion of each day of trial, the Court and counsel shall review the next days' witnesses, examination time and other calendaring issues.

## APPENDIX H

### ORDER FOR BIFURCATION OF MARITAL STATUS

Attorneys for \_\_\_\_\_

#### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

[STIPULATION AND ORDER / ORDER - Insert as appropriate]  
FOR BIFURCATION OF MARITAL STATUS

**[Assumes Petitioner is party requesting bifurcation]**

[Insert Appropriate Introductory Provision]

**1. STATUS JUDGMENT** [If motion filed]: The Petitioner's motion to bifurcate the status of the marriage from the remaining issues in the dissolution of marriage proceeding is granted and Petitioner shall be entitled to proceed to obtain a Judgment of Dissolution of Marriage (Status Only).

**1. STATUS JUDGMENT:** [If pursuant to stipulation] Petitioner shall be entitled to proceed to obtain a Judgment of Dissolution of Marriage (Status Only).

**2. RESERVATION OF JURISDICTION:** The Court severs and reserves jurisdiction over all other issues including, but not limited to, the nature and division of community property, spousal support, child support, attorneys' fees and costs.

**3. STATUS OF TEMPORARY ORDERS:** All temporary orders presently in effect shall remain in effect until the time of trial or further order of the Court.

**4. TAX CONSEQUENCES INCURRED:** Petitioner shall indemnify and hold the Respondent party harmless from any taxes, reassessments, interest, and penalties payable by the Respondent if the dissolution of the marriage before the division of the parties' community estate results in a taxable event to either of the parties by reason of the ultimate division of their community estate, which taxes would not have been payable if the parties were still married at the time the division was made.

**5. HEALTH AND MEDICAL INSURANCE:** Until judgment has been entered on all remaining issues and has become final, the Petitioner shall maintain all existing health and medical insurance coverage for the Respondent and the minor children as named dependents, so long as the Petitioner is legally able to do so. At the time the Petitioner is no longer legally eligible to maintain the Respondent as a named dependent under the existing health and medical policies, the Petitioner or the Petitioner's estate shall, at the Petitioner's sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance coverage is not obtained, the Petitioner or the Petitioner's estate is responsible for the health and medical expenses incurred by the Respondent that would have been covered by the insurance coverage, and shall indemnify and hold the Respondent harmless from any adverse consequences resulting from the lack of insurance.

(#6. DOESN'T APPLY IF EMPLOYER HAS LESS THAN 20 EMPLOYEES AND IS NOT GOVERNED BY C.O.B.R.A.)

**6. ADDITIONAL PROVISIONS RE: HEALTH INSURANCE:** Where the Consolidated Omnibus Budget Reconciliation Act (C.O.B.R.A.) applies to health insurance coverage, Petitioner shall, unless relieved of this obligation by a writing signed by Respondent or Respondent's counsel, notify Petitioner's employer and do all acts necessary to insure that C.O.B.R.A. coverage is instituted for Respondent and is continued in full force and effect. If Respondent's rights under C.O.B.R.A. are terminated due to Petitioner's failure to institute and maintain proper coverage on behalf of Respondent, Petitioner, or Petitioner's estate, shall indemnify, reimburse and hold Respondent harmless from the loss of any and all benefits which would have been provided had Petitioner instituted and maintained C.O.B.R.A. coverage. Respondent will do any act reasonably necessary to facilitate Petitioner instituting coverage.

(#7. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY).

**7. PROBATE HOMESTEAD:** Until judgment has been entered on all remaining issues and has become final, the Petitioner shall indemnify and hold the Respondent harmless from any adverse consequences resulting to the Respondent if the bifurcation results in a termination of the Respondent's right to a probate homestead in the residence in which the Respondent resides at the time the severance is granted.

(#8. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY)

**8. PROBATE FAMILY ALLOWANCE:** Until judgment has been entered on all remaining issues and has become final, the Petitioner shall indemnify and hold the Respondent harmless from any adverse consequences resulting to the Respondent if the bifurcation results in the loss of the rights of the Respondent to a probate family allowance as the surviving spouse of the Petitioner.

**9. REAL ESTATE:** Until a Judgment is entered on all remaining issues and becomes final, or until further court order, whichever occurs first, the parties are restrained and enjoined from transferring any real estate held by either of them personally or through or by any corporation, partnership or other entity in which they had or have any interest, to any person, business, or entity, without first giving the other party 30 days' written notice of any such proposed transfer.

**10. SOCIAL SECURITY BENEFITS:** The Petitioner shall indemnify and hold the Respondent harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the Respondent would have been entitled to those benefits or elections as the surviving spouse of the Petitioner.

**11. PENSION BENEFITS** Until judgment has been entered on all remaining issues and has become final, the Petitioner shall indemnify and hold the Respondent harmless from any adverse consequences resulting to the Respondent if the bifurcation results in the loss of the Respondent's rights to pension benefits, elections, or survivors' benefits under the Petitioner's pension or retirement plan to the extent that the Respondent would have been entitled to those benefits or elections as the surviving spouse of the Petitioner.

(#12: THESE ORDERS ARE DESIGNED FOR PLANS THROUGH PRIVATE EMPLOYERS WHICH ARE GOVERNED BY E.R.I.S.A. YOU MUST MAKE MODIFICATIONS IF THE PLAN IS EITHER MILITARY OR GOVERNMENTAL.)

**12.0 RETIREMENT PLAN ORDERS:** With regard to any pension plans or other forms of deferred compensation of either party, Petitioner's counsel shall file with this order an Interim Qualified Domestic Relations Order re Survivor Benefits in the form of **Appendix \_\_\_\_** to the San Diego Superior Court Family Law Rules and cause a copy of the proposed Interim Qualified Domestic Relations Order to be served on the Plan by certified mail.



**12.1 PLAN JOINDER:** The non-employee spouse shall immediately join the Plan as a party to these proceedings.

**12.2 FINAL ORDERS:** Petitioner's Counsel must submit to the plan or plans, after all property issues have been entered and become final, a final qualified domestic relations order, or if a plan is awarded entirely to the employee spouse, an order terminating the interim qualified domestic relations order re survivor benefits.

**13. ENFORCEMENT AFTER DEATH:** If Petitioner dies after the entry of judgment granting a dissolution of marriage, any obligation imposed by this order shall be enforceable against any asset, including the proceeds thereof, against which these obligations would have been enforceable prior to the Petitioner's death.

**14. TAXES, ATTORNEY FEES AND HOLD HARMLESS ORDER:** Petitioner, and in the event of Petitioner's death, Petitioner's estate, shall reimburse Respondent for all damages and costs incurred as a result of Petitioner or Petitioner's estate's failure to abide by this Order including reasonable attorneys' fees, costs and accountants' fees either incurred in defending an action by any taxing authority or enforcing the provisions of this Order.

**15. APPLICABLE LAW:** All provisions contained in this Judgment of Bifurcation shall be interpreted in conformance with California Family Code section 2337.

[Insert Appropriate Signature Provisions]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

## APPENDIX I

### INTERIM QDRO

#### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of Petitioner: and Respondent:	CASE NO. D INTERIM QUALIFIED DOMESTIC RELATIONS ORDER RE: SURVIVOR BENEFITS
--	--

**PURSUANT TO THE [STIPULATED] ORDER FOR BIFURCATION OF THE PARTIES' MARITAL STATUS, THE COURT MAKES THE FOLLOWING FINDINGS AND ORDER:**

1. The Plan name and address of the Plan Administrator are as follows:

Name of Plan:

Plan Administrator:

Street:

City/State/Zip:

2. Name, address and Social Security Number of Petitioner/Participant:

Participant:

Name of Plan:

Street:

City/State/Zip:

Social Security No.:

3. Name, address and Social Security Number of Respondent/Alternate Payee:

Alternate Payee:

Name of Plan:

Street:

City/State/Zip:

Social Security No.

4. \_\_\_\_\_ ("Participant") has earned certain benefits under \_\_\_\_\_ the ("Pension Plan") which are the community property of ("Alternate Payee") and Participant. Pending a final order of the Court, Participant and Alternate Payee intend by this Stipulation and Order to provide for the continuation of surviving spouse benefits to Alternate Payee.

5. This Order is intended to be a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code of 1986, as amended.

**6.** If Participant dies before the effective date of Participant's retirement and if Alternate Payee survives participant, then Alternate Payee shall be treated by the Pension Plan as a "surviving spouse" of Participant for purposes of any pre-retirement benefit payable to a surviving spouse under the Pension Plan. Alternate Payee shall receive all of such pre-retirement survivor benefit.

**7.** This Order is effective against any successor(s) or transferee plans of Pension Plan, including any plan(s) into which the Pension Plan is merged.

**8.** This Order is effective following the termination of the Pension Plan and shall also apply to any benefits payable to Participant by the Pension Benefit Guaranty Corporation in the event of the termination of the Pension Plan with insufficient assets to pay all benefits.

**9.** Each party shall be responsible for and pay any taxes due in connection with his or her receipt of distributions from the Pension Plan.

**10.** Upon request, each party shall perform any act reasonably necessary to carry into effect the terms of this Order.

**11.** The Court retains jurisdiction to make such further orders to modify, enforce, clarify or revoke the provisions of this Order. The Pension Plan will not be responsible to inquire into any possible changes in the provisions of this Order, but will act in accordance with the most recent form of the Order which has been provided to the Pension Plan.

**12.** Pending further order of the Court, the Plan is restrained and enjoined from making any distribution to Participant, Alternate Payee, or any other Payee.

APPROVED AS TO FORM:

\_\_\_\_\_

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

## APPENDIX J

### CONFIDENTIAL INFORMATION FOR MINOR'S COUNSEL

Counsel for Minor: \_\_\_\_\_ Case Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

<b>confidential information for minors counsel and accounting department</b>			
Children's Names	Birth Date	Sex	Name and Relationship of Person With Whom Child Resides

MOTHER'S INFORMATION	FATHER'S INFORMATION	GUARDIAN'S INFORMATION
Name:	Name:	Name:
Address:	Address:	Address:
Phone #:	Phone #:	Phone #:
Place of Employment:	Place of Employment:	Place of Employment:
Work Phone:	Work Phone:	Work Phone:
Cell Phone:	Cell Phone:	Cell Phone:
Social Security #:	Social Security #:	Social Security #:
Driver's License # and State:	Driver's License # and State:	Driver's License # and State:
Date of Birth:	Date of Birth:	Date of Birth:
Attorney's Name:	Attorney's Name:	Attorney's Name:

Restraining Orders in effect? Yes (    ) No (    ) Which Party is Restrained? \_\_\_\_\_

Comments:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**We each hereby declare under penalty of Perjury that the foregoing information is true and correct.**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Print Your Name: \_\_\_\_\_ Print Your Name: \_\_\_\_\_

\_\_\_\_\_

Sign Here: \_\_\_\_\_ Sign Here: \_\_\_\_\_

\_\_\_\_\_

DIVISION VI  
JUVENILE  
PROPOSED RULE CHANGES EFFECTIVE 1/1/05

**Rule 6.3**

**Standing, Rights and Levels of Participation in Dependency Cases**

Unless otherwise expressly granted by constitutional, statutory, or case law, or rule of court, the standing, rights, and levels of participation of the following persons in dependency cases shall be limited to those provided in this rule.

. . . .

**(c) De facto parent:**

For purposes of this rule, a de facto parent is a person ~~who is the current or recent caretaker of a child and~~ who has been found by the court to have assumed, on a day-to-day basis, the role of a parent to the child, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period of time. . . .

**Rule 6.4**

**Peremptory Challenge**

~~The court may assign dependency cases on an independent calendar system. Under that system, a dependency case assigned to a particular judge, commissioner, or referee shall remain with that judicial officer until the termination of jurisdiction, unless otherwise ordered. Assignment to a courtroom shall not be construed as assignment to a specific judicial officer.~~

~~Under independent calendar system, a challenge pursuant to Code of Civil Procedure § 170.6 to any judge, commissioner, or referee must be made within 10 days after notice of the assignment of the case to a specific judge, commissioner, or referee, or it will be deemed untimely. Notice of the assignment is complete upon service of such notice or initial appearance in court~~

**This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure section 170.6 and California Government Code § 68616(i).**

**Rule 6.60 Disclosure of Information Relating to Dependent Children and their Families-Preliminary Provisions**

For purposes of this rule, “dependency juvenile court records” include:

**(a)** ~~juvenile court~~ those records as defined in CRC 1423;

**(b)** records kept in Health & Human Services Agency (“HHS”) files pursuant to WIC § 10850 and Penal Code § 11165 et seq., regardless of whether a WIC § 300 petition was filed in the case; and

**(c) records kept in Probation Department files, regardless of whether a WIC § 601 or 602 petition was filed in the case; and**

**(c) (d)** testimony from HHS or Probation personnel regarding any information contained in dependency juvenile court records (cf. *City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239).

**For purposes of this rule, “juvenile court records” do not include:**

**(a) records sealed pursuant to WIC § 389 or § 781;**

**(b) records maintained by the Department of Motor Vehicles; and**

**(c) records regarding offenses that were tried in the criminal division of the court because the minor was found unfit to be tried in the juvenile division.**

For purposes of this rule, “disclosure” or “access” provides for inspection, but not photocopying, at the court’s business office or the HHSA **or Probation** office where the ~~dependency~~ records are maintained, unless otherwise ordered by the court.

If the court authorizes photocopying, it ~~shall~~ **must** be done by court or HHSA **or Probation** personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies shall **must** pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees, citing Gov. Code § 26831).

~~Dependency~~ **Juvenile court** records may not be obtained by civil or criminal subpoena. A waiver of confidentiality by any person identified or described in the requested ~~dependency~~ records does not automatically confer a right of access to those records.

#### **Rule 6.61**

#### **Disclosure of ~~Dependency~~ Juvenile Court Records to Persons and Agencies Not Designated in WIC § 827 - Petition for Disclosure (JV-570) Required**

(For procedures relating to prehearing discovery of dependency records by the parties to a dependency proceeding and their counsel, see rule 6.7.)

Except as otherwise provided in Chapter Six of these rules, if a person or agency not designated in WIC § 827 seeks access to ~~dependency~~ **juvenile court** records, including documents and information maintained by the court, the Probation Department, or the HHSA, that person or agency shall **must** file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570. The petition shall **must** be filed with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions, unless the court has made an order cross-designating another court to sit as a juvenile court (see rule 6.28**62**). **The petition must comply with rule 1423 of the California Rules of Court and with these rules.**

Petitioner shall **must** give notice as required by CRC 1423(d). Service shall **must** be to the subject of the juvenile records if he or she is no longer a minor or, if still a minor, upon a person authorized to act on his or her behalf (e.g., parent, guardian, attorney, etc.). This notice shall **will** not be required if a written waiver of such notice is obtained from the minor (if now an adult) or a person authorized to act on the minor’s behalf. For good cause shown, the court may waive such notice.

If the records are sought for use in a legal action which is not a ~~dependency~~ **juvenile court** proceeding, petitioner shall **must** also give notice by personal service or first-class mail to all parties in that action.

The petition should be prepared as follows:

1. Enter petitioner's name and address.
2. Enter petitioner's relationship to the child whose records are sought.
3. Mark the appropriate boxes.
4. Describe in detail the records sought (e.g., entire court file, specific documents in court file, information in HHSA/Probation files, social worker/probation officer testimony regarding file).

. . . .

## **Rule 6.62 Cross-Designation of Other Courts to Sit as Juvenile Courts for Purposes of WIC § 827**

### **(a) Family Court Proceedings**

If ~~dependency~~ juvenile court records are sought for a pending action in the San Diego Superior Court Family Law Division and the action involves the child ~~and~~ or the child's family, the judicial officer presiding in that court may be cross-designated by this rule as a judge of the San Diego Superior Court Juvenile Division for the purpose of determining which records, if any, should be disclosed to the requesting party and the terms of any appropriate protective orders. The judicial officer ~~shall~~ will make this determination in accordance with WIC § 827, CRC 1423, Evidence Code §§ 915(b) and 1040(b), and Penal Code § 11167(d).

### **(b) Civil and Criminal Proceedings**

If ~~dependency~~ juvenile court records are sought for a pending civil or criminal action in San Diego Superior Court and the action involves the child or the child's family, the judicial officer presiding in that court may be cross-designated as a judge of the San Diego Superior Court Juvenile Division for the purpose of determining which records, if any, should be disclosed to the requesting party and the terms of any appropriate protective orders. The judicial officer ~~shall~~ will make this determination in accordance with WIC § 827, CRC 1423, and Evidence Code §§ 915(b) and 1040(b).

Requests for cross-designation may be made by counsel in the civil or criminal action, or by the civil or criminal court on its own motion, and should be directed to the Presiding Judge of the San Diego Superior Court Juvenile Division.

## **Rule 6.63 Disclosure of Dependency Records to Persons and Agencies not Designated in WIC § 827 - Petition to View Records (JUV-4) Required**

### **(a) . . . .**

1. Judicial officers of the San Diego Superior Court Family Division, when the child who is the subject of the records, or his or her sibling, is also the subject of custody or visitation proceedings under Family Code § 3000 et seq. (See Fam. Code §§ 3011(b), 3020). In such cases, the Family Law judicial officer ~~shall~~ will be cross-designated pursuant to rule 6.62(a) for the purpose of determining which records, if any, should be disclosed to the parties in the family law proceeding and the terms of any appropriate protective orders.

....

4. San Diego County Juvenile Probation Officers, when the child who is the subject of the records is also the subject of juvenile court proceedings under WIC § 601 or 602. In such cases, which are subject to the court's Protocol for Coordination in Dual Jurisdiction Matters, the following persons may have access to the child's delinquency records, including minutes orders, and/or may obtain photocopies of the delinquency records without a prior court order: [1] HHSA social workers, [2] all dependency attorneys actively participating in juvenile proceedings involving the child, and [3] the child's CASA, if any. Copies of any joint assessment report, prepared pursuant to WIC § 241.1 and filed with the court, must be provided to the DA, the child's defense attorney and dependency attorney, County Counsel, ~~child, the child's parent or legal guardian, all attorneys of record~~, the HHSA social worker, the probation officer, any CASA, and any other juvenile court having jurisdiction over the child.

....

25. The San Diego County Probation Department, when performing its duty under Penal Code § 1203.097 to certify treatment programs for domestic violence offenders, for purposes of documenting a treatment program's failure to adhere to certification standards and identifying serious practice problems in such treatment programs, provided that in any proceeding for the suspension or revocation of a treatment provider's certification or in any document related thereto, the Probation Department shall **must** not disclose any child's name.

Persons seeking access to and/or photocopies of dependency records under this rule shall **must** fill out, sign, and submit to the clerk in the Juvenile Court business office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SUPCT form JUV-4). The completed form shall **will** be kept in the file that is the subject of the Petition and/or Request.

....

Persons seeking access to and/or photocopies of dependency records under this subdivision shall **must** present a photo I.D. and proof that they are entitled to access and/or photocopies (e.g., law enforcement badge or Bar card).

Persons seeking access (but not photocopies) to dependency records under this subdivision shall **must** fill out, sign, and submit to the clerk in the Juvenile Court business office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SUPCT form JUV-4). The completed form shall **will** be kept in the file that is the subject of the Petition and/or Request.

Persons seeking photocopies of dependency records under this subdivision shall **must** file a Petition for Disclosure [JV-570] (see rule 6.2761).

(c) Persons or agencies obtaining records under this rule shall **must** not disclose such records to another person or agency unless authorized to do so by the Juvenile Court. Any unauthorized disclosure may be punishable as provided by applicable laws.

....



## **Rule 6.64 Disclosure of Dependency Records to Counsel for the Child in a Delinquency Proceeding**

(a) Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (WIC § 602~~1~~1 et seq., including WIC § 707) may have access to the child's dependency records, as defined in rule 6.26~~60~~60, without a prior court order, subject to the following:

1. Counsel ~~shall~~ **must** give notice to the HHSA social worker assigned to the child's case (or the HHSA Legal Procedures Liaison, if there is no assigned social worker) at least five days before counsel will inspect records maintained by the HHSA.
2. Counsel ~~shall~~ **will** not have access to any information which would tend to identify a reporter of child abuse or neglect, as prohibited under Penal Code §§ 11167 and 11167.5.
3. Counsel ~~shall~~ **will** not have access to any information regarding HIV testing or HIV infection, as prohibited under Health & Safety Code § 120975 (formerly § 199.20) et seq.
4. Counsel ~~shall~~ **will** not have access to any confidential or privileged information regarding persons other than his or her child client.
5. Persons seeking access to dependency records under this rule ~~shall~~ **must** fill out, sign, and submit to the clerk in the Juvenile Court business office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SUPCT form JUV-4). The completed form ~~shall~~ **will** be kept in the file that is the subject of the Petition and/or Request.

....

(b) Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (WIC § 602~~1~~1 et seq., including WIC § 707) ~~shall~~ **must** file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570 (see rule 6.27~~61~~61), with a request for a protective order (see CRC 1423(b)), in order to:

....

Notice of the filing of the Petition for Disclosure ~~shall~~ **must** be given as required by CRC 1423(d).

If the court authorizes photocopying, it ~~shall~~ **must** be done by court or HHSA personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies ~~shall~~ **must** pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees, citing Gov. Code, § 26831).

....

## **Rule 6.65 Disclosure of Law Enforcement Reports Regarding Juveniles to Persons and Agencies not Designated in WIC § 828**

If a person or agency not designated in WIC § 828 seeks access to unsealed records held by a law enforcement agency, including reports regarding children who are the subject of dependency **juvenile court** proceedings, that person or agency shall **must** file a Petition to Obtain Report of Law Enforcement Agency/Juvenile (Judicial Council form JV-575) with the clerk in the Juvenile Court business office or other clerk designated to receive such petitions. The petition shall **must** set forth with specificity the reasons for the request, the information sought, and its relevancy to the proceeding or purpose for which petitioner seeks the information.

#### **Rule 6.68 Disclosure of School Records to Suicide Homicide Audit Committee (SHAC)**

. . . . Any school records or information obtained under this rule, including discussions and consultations among SHAC members regarding such records or information, shall **must** be kept confidential and shall **must** not be released, directly or indirectly, to nonmembers.

#### **Rule 6.69 Disclosure of Delinquency Records to Victims of Crime**

**Unless otherwise ordered by the court, the DA may release the following information to the victim(s) of a crime committed by a juvenile offender:**

- 1. information regarding the status of the case;**
- 2. name(s) of the minor(s) ordered to pay restitution to the victim;**
- 3. name(s) of the parent(s) or guardian(s) of any minor(s) ordered to pay restitution to the victim; and**
- 4. the address of the minor and/or the parent or guardian, if the victim states that the address is necessary to collect restitution or to file a civil action.**

**The information is to be used by the victim only to collect restitution ordered by the juvenile court. Before receiving any information, the victim, or his or her representative, must sign the form entitled "Warning to Victims of Crimes by Juvenile Offenders."**

## CHAPTER NINE. JUVENILE DELINQUENCY PROCEEDINGS

### Rule 6.90 Preliminary Provisions

Rule 6.1, in the chapter entitled "Juvenile Dependency Proceedings," applies equally to juvenile delinquency proceedings.

### RULE 6.91 Definitions, Construction of Terms

(a) As used in these rules, unless the context or subject matter otherwise requires:

- (1) "Clerk" means the clerk of the juvenile court;
- (2) "Court" means the juvenile court, and includes any judge, referee, or referee pro tem of the juvenile court, unless otherwise specified;
- (3) "CRC" refers to the California Rules of Court;
- (4) "D.A." means District Attorney.
- (5) "JPD" means the Juvenile Probation Department of the County of San Diego;
- (6) "Law Enforcement Agency" includes the San Diego County Sheriff's Department, all city police departments in San Diego County, and all school district police or security departments in San Diego County;
- (7) "Minor" or "child" means a person under the age of 18 years;
- (8) "PC" refers to the California Penal Code.
- (9) "P.O." means Probation Officer.
- (10) "WIC" refers to the California Welfare and Institutions Code.

#### (b) Construction of terms

- (1) "Shall" or "must" is mandatory; "may" is permissive.
- (2) The past, present, and future tense shall include the others.
- (3) The singular and plural number shall each include the other.

### Rule 6.92 Assignment of Cases and Peremptory Challenges

This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure section 170.6 and California Government Code § 68616(i).

### Rule 6.93 Continuances

Continuances of hearings will be granted only upon a showing of good cause and in accordance with the procedural requirements of WIC § 682 and CRC 1486. A continuance may be granted following a time waiver by the minor.

### RULE 6.94 Ex Parte Applications and Orders

(a) No party shall submit an ex parte application to the court for an order unless it appears by affidavit or declaration that one of the following is true:

- (1) Within a reasonable time before the application, the party informed all other parties and their attorney(s) when and where the application would be made and provided a copy of the application and proposed order to the attorney(s).

(2) The party in good faith attempted to inform all other parties or their attorney(s) of the application but was unable to do so, describing with particularity the efforts made to inform each party.

(3) The party should not be required to inform all other parties or their attorney(s) for the reasons specified. The court in its discretion may choose to inform the other parties of the reasons specified in the ex parte application.

(b) If the JPD files an ex parte application for an order terminating jurisdiction, the JPD must also serve notice thereof on the D.A. and minor's counsel. Any objection(s) must be submitted in writing to the court within ten court days of the filing of the application. Failure to timely submit a written objection constitutes a waiver of the objection. If a written objection is timely filed, the court will set a hearing on the application and serve notice of the hearing on all parties.

(c) An ex parte report may be used to request modifications of previous orders that have been so stipulated, to correct or clarify orders, to get permission from the court to proceed in a certain manner with a case, to update information to the court, or to give the court additional information. Examples of matters that are appropriate for ex parte handling: funding orders that were not included in the original court order but that are essential to carry out the order; vacate orders that are no longer needed; 15-day reviews; permission for travel outside the county; termination of jurisdiction when it was previously stipulated that jurisdiction would terminate once the minor complied with specific orders.

#### RULE 6.95 Requirements for Noticed Motions

(a) All motion papers, opposition papers, and reply papers must be in writing and must display on the first page the motion hearing date, time, and department and a time estimate for the motion hearing.

(b) Time for service when the minor is detained: Unless a different briefing schedule is set by the court,

(1) All moving papers must be filed and served on the opposing party at least 5 court days before the time appointed for the hearing.

(2) All papers opposing the motion must be filed and served at least 2 court days before the time appointed for the hearing.

(3) All reply papers must be filed and served at least 1 court day before the time appointed for the hearing.

(c) Time for service when the minor is not detained: Unless a different briefing schedule is set by the court,

(1) All moving papers must be filed and served on the opposing party at least 10 court days before the time appointed for the hearing.

(2) All papers opposing the motion must be filed and served at least 5 court days before the time appointed for the hearing.

(3) All reply papers must be filed and served at least 2 court days before the time appointed for the hearing.

(d) Points and Authorities:

(1) All moving and opposing papers must be accompanied by supporting points and authorities.

(2) A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

(3) The memorandum must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

(4) Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the new issues were not reasonably discoverable before the motion was filed.

(5) Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

(6) Failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

(7) In case of a failure of either party to serve and file points and authorities within the time permitted, the court may find good cause to continue the hearing.

(e) Abandonment of Motions: Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended pursuant to Penal Code section 1368.

(f) Concession That Motion is Meritorious: If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

(g) Length of Points and Authorities: No opening or responding memorandum of points and authorities exceeding 15 pages shall be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.

RULE 6.96 Fax Filing

Any document in a delinquency case may be filed by fax between 8:30 a.m. and 4:30 p.m. Monday through Friday. The fax number may be obtained by contacting the Juvenile Court Business Office. Fax filings must comply with the requirements of CRC 1406.5.

#### RULE 6.97 Warrants

All warrants of arrest and juvenile detention orders, including those stored in electronic form, are deemed authenticated at the time a Juvenile Court judge issues an order authorizing the issuance of the arrest warrant or juvenile detention order.

#### RULE 6.98 Reciprocal Discovery

The discovery provisions of Penal Code section 1054 et seq. apply to juvenile delinquency cases.

#### RULE 6.99 Public and Media Access

In most cases, juvenile delinquency proceedings are presumed to be confidential and closed to the public. However, any person whom the court deems to have a direct and legitimate interest in a particular case or in the work of the court may be admitted. Furthermore, hearings concerning petitions that include any of the offenses listed in WIC § 676(a) are presumptively open to the public. A request for media coverage must be submitted on form SUPCT ADM-20 at least five court days before the hearing unless good cause for noncompliance is shown. Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse. This rule is not meant to affect the rights of any victim or other person entitled by statute to be present. (See Welf. & Inst. Code, §§ 676.5, 679.)

#### RULE 6.100 Competence and Mental Health Evaluations

Whenever a minor's competence or mental health is in doubt, an evaluation must be done as soon as possible after the delinquency case is initiated to determine whether the minor is incompetent or in need of emergency inpatient mental health services. When indicated, services must be provided in a timely manner. Requests for such evaluations must comply with the Juvenile Court's protocols for competence evaluations and court-ordered inpatient mental health evaluations.

#### RULE 6.101 Administration of Psychotropic Medications

After a child is declared a ward of the court under WIC § 601 or 602 and removed, either temporarily or permanently, from the physical custody of his/her parent or guardian, only a Juvenile Court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child. The procedures and forms described in CRC 1432.5 apply in delinquency cases. Requests for orders for psychotropic medications for 601 and 602 wards must comply with the requirements of CRC 1432.5.

#### RULE 6.102 Initial Health Screening

Prior medical authorization will not be required for the initial health screening of minors at Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. Initial health screenings must be performed within 72 hours of detention and will include a physical examination, laboratory tests, immunizations, and X-rays. The Probation Department will attempt to obtain parental consent for medical care. If such consent cannot be obtained, the Probation Department will seek a court order authorizing medical care. In an emergency situation, medical care may be delivered to minors in detention without parental consent or a court order. (See Welf. & Inst. Code, § 739.)

#### RULE 6.103 Immunizations

All minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, where medical records are unavailable and/or due diligence efforts are unsuccessful in locating a parent, guardian or other responsible adult relative, will receive all necessary immunizations against poliomyelitis, diphtheria, pertussis, tetanus, measles, rubella and mumps. Such immunizations are reasonable and necessary under section 120335 of the Health and Safety Code to enable attendance in school programs operated by Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. All immunizations must be performed by a licensed health care provider.

#### RULE 6.104 Sex Education

The Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, in conjunction with the County Office of Education, the Department of Public Health, and approved community-based organizations, may conduct sex education classes as part of the education curricula for all minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. These classes may include information on AIDS and its transmission.

#### RULE 6.105 Off-Site Counseling

Any minor detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility pending acceptance by and delivery to a 24-hour institution may be transported from the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility to the 24-hour institution for counseling or other rehabilitative treatment, provided the assigned probation officer consents to the off-site treatment.

#### RULE 6.106 Travel Out of San Diego County

The Probation Department is authorized to grant permission to wards to travel out of the County of San Diego but within the State of California for trips of up to 72 hours. An ex parte order from the Juvenile Court is required for trips over 72 hours and/or outside the State of California.

